

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration of

SARAH LLC, HALA SUBH, SUHAD ALBASHA,

BACHAR HAMAD AND AMAR HAMAD,

CLAIMANT,

-and-

Case No.:

01-18-0000-6180

FORALL USA, INC.,

RESPONDENT.

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DATE: October 26, 2020

TIME: 9:39 A.M.

ARBITRATION in the above
entitled matter, held Via Zoom,
transcribed by Magdalena M. Artiles, a
Notary Public of the State of New York,
held before Eugene I. Farber,
Arbitrator.

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22 ALSO PRESENT:

23 Amar Hamad
24 Palma Settimi
25 Sana'a Hussein

* * *
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2 THE ARBITRATOR: Morning,
3 everyone.

4 Mr. Lewis or Mr. Shah, can
5 you please identify who is on
6 this Zoom call for claimant.

7 MR. LEWIS: Yes. Thank you.

8 Rodney Lewis on behalf of
9 claimants. We have Mr. Sohil
10 Shah appearing alongside me.

11 Also, on behalf of claimants, I
12 am seeing that we have Sana'a
13 Hussein, who is Dr. Hamad's
14 personal attorney, and we have
15 Dr. Amar Hamad as well.

16 THE ARBITRATOR: Hang on a
17 minute. Could you spell your
18 last name. I see on the screen
19 "S-A-N-A."

20 MS. HUSSEIN: It's -- first
21 name is S-A-N-A, apostrophe, A.
22 Last name is: H-U-S-S-E-I-N.

23 THE ARBITRATOR: Thank you.
24 Good morning.

25 And who else is the on the

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2 line, Mr. Lewis?

3 MR. LEWIS: We have Dr. Amar
4 Hamad.

5 THE ARBITRATOR: Dr. Hamad,
6 I'd like to see you, please. I
7 only see the words "Amar Hamad".

8 MR. HAMAD: Good morning.
9 How are you?

10 THE ARBITRATOR: I'm good,
11 but I still don't see you. Dr.
12 Hamad, I think that at the bottom
13 of your screen, you'll see a
14 little video, and I suspect it
15 has a line in it. What you have
16 to do is: You have to hit that
17 with your cursor and then the
18 video will appear. Okay. That
19 worked. Good morning, Dr. Hamad.

20 And is there anyone else on
21 for you, Mr. Lewis?

22 MR. LEWIS: Not that I see,
23 Mr. Farber.

24 THE ARBITRATOR: Okay. Very
25 good.

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And Mr. Brown or Mr. Crowe, whoever is going to handle it, could you identify who is on for respondents?

MR. BROWN: Sure. Just if I might, though, I would like the contact information for Ms. Hussein when we have a moment. She does not have an appearance in this matter, so I just want to have the ability to contact her if need be.

Stephen Brown for --
THE ARBITRATOR: Ms. Hussein, why don't you give us a phone number right now?

MS. HUSSEIN: (708)361-3030.

THE ARBITRATOR: And let us have an address, please.

MS. HUSSEIN: 14490 John Humphrey Drive, and that's in Orland Park, Illinois 60462.

THE ARBITRATOR: Thank you very much.

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Mr. Brown, go ahead.

MR. BROWN: Thank you. Good morning, everyone. Stephen Brown with Bleaky Platt & Schmidt, White Planes, New York, for respondent, Forall USA Inc.

MR. CROWE: And I'm Vincent Crowe, also for the respondent, Bleaky Platt & Schmidt.

MR. BROWN: And Mr. Farber, in the room with us is Paolo Torello-Viera. He's not on screen. He's looking at it on a projected screen, but he's participating and listening to the proceeding today.

THE ARBITRATOR: Can you spell his name for me, please?

MR. BROWN: Paolo, P-A-O-L-O.

THE ARBITRATOR: I couldn't hear you, Mr. Brown. Say it again.

MR. BROWN: One second, Your

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Honor. I need to look at it.

THE ARBITRATOR: And this is the last time I'll say it, but it's not necessary to call me "Your Honor". You can just call me Mr. Farber.

MR. BROWN: I apologize. Paolo, P-A-O-L-O; Torello-Viera, T-O-R-E-L-L-O, hyphen, V-I-E-R-A.

THE ARBITRATOR: Okay. And is there anyone else on?

MS. SETTINI: I'm Palma Settini.

THE ARBITRATOR: Can you spell your last name?

MS. SETTINI: S-E-T-T-I-N-I.

THE ARBITRATOR: And you are?

MS. SETTINI: I'm the assistant treasurer and secretary of Forall USA.

THE ARBITRATOR: Okay. Thank you. Welcome. Hang on. Mr. Lewis disappeared. I don't

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see Mr. Lewis. Okay.

And I have on this what's called "Call in user."

Mr. Brown, am I correct that that is simply another line for you?

MR. BROWN: Yes. We are dialing in and listening to the audio with a telephone.

THE ARBITRATOR: Okay. Very good. All right. I think we lost Mr. Lewis again. I only see an empty chair. Okay.

Look, everyone, good morning. I'm Gene Farber, and this is our first evidentiary hearing in connection with this matter. And on consent, we are conducting this hearing by Zoom, and you've both given me rather detailed submissions. You've given me briefs and exhibits. I have carefully reviewed the same. We're going to start with opening argument, and the opening

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argument you can discuss what you'd like in response to the briefs submitted by the other side. I may interrupt with questions.

Claimant will go first. Presumably, that will be Mr. Lewis or Mr. Shah. When they are finished, we will hear from respondent's counsel, either Mr. Brown or Mr. Crowe. Then we'll get to work with our first witness, and we'll just continue with our work.

So I did get delivered to me this morning -- looks like about 10 binders of material. I have not been through them yet. They were just delivered within the last hour. So I have not had an opportunity to look at them, but there were rather detailed exhibits, particularly, the agreements, the documents that

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were signed, which were attached to the two briefs, so I'm familiar with them. All right.

Without anything further, if there are any administrative matters, we'll deal with them after we're finished with the opening statements.

Mr. Lewis, why don't you proceed?

Guys, I also want to apologize. The way my office is set up, my monitor is to the right of my -- of my desk. So for me to write, I'm going to be sitting like this, and you may therefore only see a side view, and I'll turn from time to time for the frontal view, but as I'm writing, it's going to be like this, so you may not see the direct full face front of me. It's just the way my office is set up. So I just want you to be

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aware of that. Okay.

Mr. Lewis, why don't you go ahead, sir.

MR. LEWIS: Thank you, Mr. Farber. And Mr. Farber, you're quite aware of what this case is about.

This is about two ambitious --

THE ARBITRATOR: Speak louder, if you can.

Hang on. I'm not going have a situation where I cannot see people. It's difficult enough to do this by Zoom. I've got to have visual of Dr. Hamad. Either he's in or he's out. Okay. As a witness, I want you to be in. All right. Go ahead. Go ahead.

MR. LEWIS: Thank you. Again, you're quite aware of what this case is about, Mr. Farber. It is about two ambitious physicians in further pursuit of

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the America dream, who developed an infinity for Pal Zileri menswear, and happened to meet some people in the fashion industry, and connected to Forall USA and began discussing opening a Pal Zileri store in Las Vegas.

The store opened in 2011 and for merit reasons, many of which will be discuss here in the arbitration, the store failed. Now, the store closed in less than five years, despite having three different operators. First, Sarah. Second, Italnord, which is owned by a gentleman named Alfonso Entebi of Mexico who owned several successful high-end mens' fashion wear stores, including a Pal Zileri store, and had operated successfully in these other locations in Latin America. Mr. Entebi also failed in this

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particular location. Third, was Forall itself.

As Mr. Farber is aware, Forall, in early 2015, decided to try its hand in operating the store. Obviously, they're experienced with their brand and their operation, and they were still unable to get the store to succeed in that particular location.

Now, the evidence will show that it did not matter who was operating the store; the store was not going to succeed in the Forum shops of Las Vegas at that time. The evidence will show that it was not the doctor's inexperience, as Forall suggests, that caused the store's ultimate failure. The evidence will show it was a combination of the size of the space, a lack of marketing, advertising, and brand

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awareness of the United States.

The evidence will show that after the Simon Group, who is the manager of the Forum shop now, took over the management from Caesars Palace, less quality stores changed, and the quality of the clientele diminished.

We also know and it's well documented that there was an explosion of hotels in Las Vegas during this period of time, and the high end mens' clothing fashion wear market was centering. And we're going to have testimony from Forall USA's former direct of sales, who will testify that it was these factors and the not the doctor's operation of the store that contributed to the store's failure, and that no matter who was operating the store in 2011, the same was going to happen.

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THE ARBITRATOR: Mr. Lewis, let me ask you this: In terms of what I have to decide in this case, except to the extent that your clients blame Forall for not living up to the license agreement, why is it important to me to know why the store failed?

MR. LEWIS: It's really the question, Mr. Farber. The evidence will show that in 2015, Simon, the manager of the property who received monthly sales reports, and this is a key point, they are tracking the sales of the store going forward from 2011 until it closed the store in August of 2016.

Simon is becoming increasingly frustrated and concerned about the store's performance, and when Forall took over the store, the understanding was this was the last chance.

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This was the last try. And in -- what's going to be important is that Forall -- there's evidence that Forall agreed to provide the doctors with a six-month notice if they weren't going to continue on operating the store and take over the lease so that Simon could find another tenant and the doctors could turn in the store to Simon and everyone walk away; that was the arrangement when Forall took over, the evidence will show.

THE ARBITRATOR: So let's go back to my question, though. You started your argument by telling me the reasons why the store failed, and what I asked was: Except to the extent that your clients blame Forall for contributing to the failure of the store, why is it important or necessary for me to hear about

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all these other items, like change of clientele, purchase of more hotels, and Las Vegas, and all these other things. Why is that relevant to what I have to decide?

MR. LEWIS: It's really to rebut what you're going to hear -- what we anticipate you're going to hear from respondents. Respondents going to say that it was the doctor's inexperience and choices that they made that contributed to the demise of the store. They dug their own hole, so to speak. So this is a rebut to that. And if again, if Mr. Farber does not believe that that's, then that's going to hold true for the respondent, and I can move forward in the opening.

THE ARBITRATOR: Okay. I hear your -- your point. I understand it. We're going --

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we'll revisit this when we actually hear the testimony, because I can understand Forall trying to put in information to say your claims that Forall contributed to demise are wrong, it was the doctors themselves, but in terms of, you know, my making a judgement about the ability of the doctors to run this high-end store, I'm not sure that I have to get into that.

So why don't you proceed, Mr. Lewis. I thank you for your responses. Go ahead.

MR. LEWIS: Thank you. So what we also anticipate, Mr. Farber, is hearing -- it's going to take just a while to adjust in not saying on "your honor," Mr. Farber, but what --

THE ARBITRATOR: Go ahead. Mr. Lewis, you might be a little bit far from the mic, because at

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various points you fade. So try to get a little closer to the audio part of it. All right?

MR. LEWIS: Okay. One of the technical issues I was having was the sound went out and I had to start using the microphone out of the web cam.

THE ARBITRATOR: Go ahead, sir.

MR. LEWIS: So we also anticipate that Mr. Farber is going to hear from respondent, at points, some language in the underlying contracts between the parties, and I won't share those with Mr. Farber right now. I'm sure you're intimately aware of the license agreement, of the management agreement between Sarah and Italnord, the asset purchase agreement between Sarah and Italnord, and the management agreement between Sarah and

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Forall, and what respondents will point to is language within the license agreement requiring Sarah to purchase \$900,000 worth of merchandise per year through year 2021.

They're also going to point to language without those ancillary agreement or subsequent agreements referring back to the license agreement and saying that Sarah's obligations thereunder continue after the term of the new operators's expire. So why I'm mentioning that Mr. Farber is: We don't contest that the language is what the language is. It says what it says in the contract, but that is not the end of the story. We know that it's well settled under New York law that doctrines such as, impracticality, impossibility, frustration of purpose, course of

6 (Pages 18 to 21)

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2 performance, and mitigation all
3 come in and they determine or can
4 determine whether a party has
5 continuing obligations under a
6 contract.

7 So it is clear that the
8 parties made a different
9 arrangement and the evidence will
10 show the parties made a different
11 arrangement about the minimum
12 purchase agreement. It is
13 undisputed that Forall chose not
14 to enforce the minimum purchase
15 agreement at any point in time
16 between 2011 and 2016.

17 THE ARBITRATOR: So let me
18 ask you about those, if I could,
19 one at a time.

20 First of all, you say "the
21 parties made a different
22 arrangement regarding the minimum
23 purchase requirement," in your
24 brief you didn't speak about this
25 at all, so tell me when and who

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2 made this different arrangement?

3 MR. LEWIS: Absolutely, Mr.
4 Farber. You're going to hear
5 from him next. He's going to be
6 our first witness. The
7 gentleman's name is Luca Spano.
8 He's the former Director of Sales
9 for the Forall USA. And Mr.
10 Spano's testimony is going to be
11 that because of the difficulty
12 that all the parties experienced,
13 witnessed, in 2011 and 2012, how
14 dramatically underperforming the
15 store was, that Forall decided
16 that the purchase requirement was
17 going to be based on the sales
18 from the prior season.

19 So if the store sold more,
20 the expectation would be that the
21 doctors would purchase more
22 merchandise. If the store sold
23 less, the expectation is going to
24 be that the doctors would not be
25 required to purchase as much

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2 merchandise.

3 THE ARBITRATOR: And are
4 there any writing supporting
5 that?

6 MR. LEWIS: The writings
7 that support that are the lack of
8 writings of any enforcing of the
9 \$900,000 minimum --

10 THE ARBITRATOR: I didn't
11 ask about lack of writings. Are
12 there any writings that support
13 that?

14 MR. LEWIS: There are no
15 writings that support that. What
16 I would say that -- Mr. Luca
17 Spano was the gentleman who met
18 with the doctors in Italy to do
19 the purchasing. He was the
20 Director of Sales in charge the
21 Hamad store on behalf of Forall.
22 He monitored sales consistently
23 and he handled the purchasing.

24 So quite frankly, it was his
25 decision of how much merchandise

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1 PROCEEDINGS
2 would be purchased, how much
3 merchandise would be responsible
4 -- they would be responsible for
5 while he was in charge.

6 THE ARBITRATOR: And what am
7 I supposed make therefor the
8 waiver clauses the merger clauses
9 that are in these agreements?

10 MR. LEWIS: That's a good
11 question Mr. Farber. So we're
12 going to present caselaw, and
13 this will be in our post arb
14 briefing, and let me show you one
15 now, please.

16 THE ARBITRATOR: Okay. Do
17 we have share screen available
18 for everybody? Maggie, do you
19 know?

20 THE COURT REPORTER: Yes.

21 MR. LEWIS: Are you all able
22 to see this slide?

23 THE ARBITRATOR: Yes.

24 MR. LEWIS: So we've got
25 several cases and won't spend all

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the time now, we'll have an opportunity in post-arb briefing to share, but this is one I wanted to show to Mr. Farber.

"Once a contract is formed, the parties may, of course, change their agreement by another -- excuse me -- by another agreement, course of performance, or by conduct amounting to a waiver or estoppel." So in this particular case, so just a parenthetical for this case.

"Product sellers were equitably estopped from invoking benefit of the no-oral-waiver provision in a contract with minimum monthly and annually purchase requirement, when the purchasers persistently and repeatedly failed to meet minimum purchase requirements, and the sellers continue to accept such conduct without any reservation or protest until just

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weeks before the expiration of the agreements." Here we have no enforcement of this term for not only during the course of the time this store was open, but Forall waited an additional 15 months after the store closed before attempting to enforce the contract, and this minimum purchase requirement. So I thought that was relevant to share, and again, there will be additional caselaw in our post arb briefing.

THE ARBITRATOR: All right. Okay. Go ahead.

MR. LEWIS: Thank you.

THE ARBITRATOR: You can proceed, Mr. Lewis.

MR. LEWIS: Okay. Thank you. So again, I think it's important to note here, and I'll risk repeating to just point it out again, the store closes in

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August of 2016, the arrangement we submit to Mr. Farber is that once Forall informs Sarah that it will not continue on and extend its operation of the store, Sarah and Simon will have six months to find a new tenant, and for Sarah to surrender the store back to Simon.

THE ARBITRATOR: Now, Forall, in its brief, takes the position that it was operating the store pursuant to the management agreement that it signed after a -- I don't know if I'm saying it right, Italnord?

MR. LEWIS: Yes.

THE ARBITRATOR: After they left. And they say that it was a complete surprise to them that an arrangement was entered into with Simon to terminate the lease. And you're telling me now to the contrary, am I right? That

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you're saying that it was not a surprise to them, because they told your client that they were only going to be operating the store for another six months under that management agreement; is that what you're saying?

MR. LEWIS: It's close to what I'm saying Mr. Farber. It goes farther than that. Before the parties entered into the management agreement, the discussions leading up to the management agreement, we have absolutely have writings. We have e-mails between the CEO of Forall and the doctors, where they are discussing the terms in the management agreement and how Forall will come in and operate the store. And the provision that the doctors insisted on was a six-month notice provision, very specifically written out in

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the e-mail, to give Sarah and Simon time to find a new tenant and surrender the lease to Simon.

THE ARBITRATOR: And was such a notice actually sent by Forall?

MR. LEWIS: It was. That's correct. And that provision made its way into the management agreement. I will try my hand at sharing the screen again. This is also -- these are documents you're going to see.

THE ARBITRATOR: I don't think we're communicating. I'm familiar with that. In fact, I think the record is going to show that Forall, I think, by a letter from Mr. Brown, actually, asked to extend that six-month period didn't they.

MR. LEWIS: They asked for an additional 60 days to consider whether they were going to

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continue on operating the store.

THE ARBITRATOR: And was there a response to that request?

MR. LEWIS: I did not see a written response, and the doctors are going to testify that they are not aware -- they do not recall whether there was verbal response. They certainly didn't respond in writing. That's true. This was no written response.

THE ARBITRATOR: Okay. Just so that I understand your client's view of the facts here, you're saying that there was a six-month deal, then there was a request by Forall for another 60 days to consider whether they were going to extend the six months, that there is no writing responding to that request, and your clients are not sure if there was an oral response to that request, but they went ahead

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and negotiated with Simon to terminate the lease anyway; is that it?

MR. LEWIS: That is not it, Mr. Farber.

THE ARBITRATOR: Then explain to me from your perspective what happened.

MR. LEWIS: Absolutely. And I want to be clear as possible here on the time line.

THE ARBITRATOR: Okay.

MR. LEWIS: Perhaps that will be helpful for me to share that.

THE ARBITRATOR: I actually made my own time line in preparation, so I'm going to be tracking it as you do yours. All right?

MR. LEWIS: I believe we've got three then.

MR. BROWN: Can I be heard on one point here?

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THE ARBITRATOR: No. Mr. Brown, let's do this: We're going to give Mr. Lewis the full opportunity, and then you'll have your full opportunity. I prefer not to have interruptions. Let's just do it with him. All right?

MR. BROWN: Understood. But it pertains to the demonstrative that he's about to pull up.

THE ARBITRATOR: If you have an objection to it, that I will hear, if there's an objection, so let him pull it up first, right.

MR. BROWN: Right. So Rodney, my objection is: If you're -- I will relinquish my objections to yours if you relinquish yours on my time line. I think it doesn't really do us much benefit to have standing objections to these time lines, which we've both pulled together.

MR. LEWIS: Mr. Farber,

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2 that's a very reasonable request.
3 My only concern is that Mr. Brown
4 shared his concern that I had
5 some argumentative information in
6 the time line yesterday --

7 THE ARBITRATOR: Guys.
8 Guys. I'm an arbitrator, not a
9 jury. You don't have to worry
10 about it. I understand there's
11 hidden argument in just about
12 everything that was given to me.
13 It's cool. You don't have to
14 worry about it, Mr. Lewis. Go
15 ahead.

16 MR. LEWIS: Are you able to
17 see the time line, Mr. Farber?

18 THE ARBITRATOR: I've got
19 it. Right.

20 MR. LEWIS: So I'll go to
21 the pertinent point here which is
22 -- there are a few points that
23 I'll make since we're in this
24 time from when Forall and Sarah
25 are negotiating, Forall is coming

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2 in to operate the agreement.

3 One of the things that I'm
4 sure Mr. Farber knows is that
5 Sarah had entered into a letter
6 agreement with Simon after
7 Italnord was unable to
8 successfully operate the store.
9 And the letter agreement allowed
10 Simon to go and find a new tenant
11 for the store at that time back
12 in 2014, October of 2014. Okay.

13 When Forall expressed
14 interest in coming in and
15 operating the store, Sarah had to
16 go back to Simon and ask to
17 rescind the letter agreement.
18 There was some back and forth,
19 there was some ruffled feathers,
20 and Simon ultimately agreed to
21 rescind the letter agreement,
22 provided that this would be the
23 last try that the store would
24 have to turn around within
25 12 months, and there's writing to

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2 that you'll see when --

3 THE ARBITRATOR: Right. But
4 when Sarah and Simon originally
5 entered into their letter
6 agreement, did Forall agree to
7 that?

8 MR. LEWIS: My understanding
9 is yes. They did agree to it.
10 This was something that was
11 necessary after Italnord was just
12 going to wash their hands of the
13 store and walk away.

14 THE ARBITRATOR: Is there a
15 writing that signifies that
16 agreement?

17 MR. LEWIS: I believe there
18 is, and I make sure I present
19 that as evidence when Dr. Hamad
20 testifies.

21 I want to bring to Mr.
22 Farber's attention about the
23 frame when before Sarah entered
24 into the agreement with Simon to
25 surrender the lease, and the

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2 important parts that come into
3 play are: One, Forall took over
4 the store in March of 2015. And
5 again, the management agreement
6 required six months, and the
7 e-mails will support that that
8 was just for an opportunity for
9 Sarah and Simon to find another
10 tenant and come into the store.

11 In February of 2016 --
12 sorry. Okay. So the timing here
13 is very important, Mr. Farber.
14 In February of 2016, Simon
15 informed Sarah that it will not
16 allow Forall to take over and
17 extend the lease. Simon made
18 that decision. And you'll hear
19 testimony that Simon was
20 increasingly frustrated with this
21 back and forth, three different
22 operators, and again they're
23 monitoring the sales monthly.
24 And you see the sales are
25 consistently going down,

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sometimes below the rent amount. Rent is being paid late, and we have evidence to that effect, that it's not months late, but it is late, consistently late. And this is a high-end manager who is not used to dealing with checks coming in the middle of the month, and rent being paid at the end of the month. So Simon is frustrated and informed Sarah that they will not move forward with Forall regardless in February of 2015. They feel the time has come.

Then Forall officially informs Sarah it will not continue operating the store past September 1, 2016, on March 9, 2016. This is the six-month notice. March 9, 2016. And you will see here that Simon informs Sarah about a new tenant, and the store must be returned before

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August 1, 2016, on July 6, 2016.

Now, full disclosure, right here, in June of 2016, and I'm sure that Mr. Brown is going to elaborate on this, in June is when Sarah entered into the agreement with Simon to surrender the lease, June of 2016, that was months after Forall had informed Sarah that it wouldn't move forward in operating the store. So it was not before then, it was after Forall had already decided it was going to walk away.

The only thing that changed from the agreement that was reached between Sarah and Forall is that the store was surrendered one month early. It was surrendered on July 31st or August 1st was when the lease was to terminate as opposed to September 1, 2016.

THE ARBITRATOR: Mr. Lewis,

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is it not so that the documents that were signed on behalf of Forall, to the extent that there were any documents signed by Forall, all indicated that Forall was reserving all of its rights as against Sarah, and particularly is against the guarantors?

MR. LEWIS: Consistently that language is present. It absolutely is. You will hear no contest to that.

THE ARBITRATOR: So what am I supposed to make of that language in the face of your argument that this conduct meant that the efficacy of the minimum purchase requirement was waved?

MR. LEWIS: Well, again the minimum purchase requirement, you'll hear from Mr. Spano, was something that was amended based on the conditions and the store's

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performance. The license agreement was signed well before anyone knew what they were going to face that that Las Vegas market. So the subsequent agreements having language saying that the obligations under the license agreement move forward, I contend the minimum purchase agreement in the license agreement is something that was waved and altered through the course of performance.

And again, there will be no writing shown to Mr. Farber where Forall attempts to enforce that agreement with that provision of the agreement until November 3rd, 2017.

At some point in time, waiver course performance, these doctrines have to come into play at some point in time. I know not to pose a question to a judge

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or an arbitrator, but this is one instance that I will ask and it's hypothetical actually, though, it's rhetorical. If the contract extended 20 more years, would Forall be able to enforce the minimum purchase requirement extending 20 more years? At some point in time, and I will contend that, certainly, this period of time qualifies. The course of performance will establish that they waved the minimum purchase required back in 2011, 2012, 2013, but certainly had done so by a failure to enforce it by November 3rd of 2017 when someone had the idea, we have an opportunity for revenue stream by sending a demand letter for the doctors, I know this was years ago, but we've got the agreement, and we may be able to get something from them. And a

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demand letter went out 15 months later to the doctor demanding 4.5 million.

THE ARBITRATOR: Okay. Why don't you proceed, go ahead.

Actually, guys, let me pause just a moment because you do raise a good point. Mr. Lewis, on your side of the table just in case because I actually did a Zoom hearing about two months ago, I did it from home and we had a thunder storm and I lost total power. So do you want to give me your cell number just in case?

Mr. Lewis, what's your cell?

MR. LEWIS: (312)342-9704.

THE ARBITRATOR: And Mr. Shah, let me have yours as well.

MR. SHAH: (312)720-1562.

THE ARBITRATOR: Okay. And Mr. Brown, let me have yours.

MR. BROWN: (914)522-7301.

THE ARBITRATOR: And Mr.

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Crowe, are you going to be with us the whole time? Do you want me to take yours or not?

MR. CROWE: You can have mine as well, Mr. Farber. It's (914)217-6915.

THE ARBITRATOR: Okay. Okay. Let's proceed. Go ahead. Well, actually, Court Reporter, Maggie, let's have yours as well.

Court go ahead, Mr. Lewis.

MR. LEWIS: Thank you, Mr. Farber. I think it will be important to share an e-mail that I've been referring to, so please indulge me while I bring that up on the screen.

THE ARBITRATOR: Is this a document that is in the joint books?

MR. LEWIS: It is. Joint Exhibit 51.

MR. BROWN: Hold on. We're going to be scrambling with your

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documents somewhat.

MR. LEWIS: I'm in the same boat.

MR. BROWN: And I just want to express my frustration in that.

THE ARBITRATOR: Guys. Guys. Not necessary. I've heard all of this already. I don't want to waste more time with it. We'll be courteous to each one and give you the time necessary to get your documents. All right? Right now I think let's put it on the screen for purposes of the argument. Let's put it up on the screen.

Mr. Lewis, go ahead.

MR. LEWIS: Mr. Farber, you've heard me in my opening talking about that there was an absolute understanding on both sides that when Forall came over to take over the store in 2015,

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that this would be a last go around, and everyone was on the same understanding that that's what this was, and so I want to share with you the e-mail treated between the doctors and the CEO of Pal Zileri. And we're having these conversation back in October of 2014. Let me bring the screen to the pertinent part of the e-mail. So this portion the e-mail is from Dr. Amar Hamad to Paolo Torello-Viera, the CEO of Forall at the time. And this is the part that's important: "This e-mail is to confirm that we are very interested for Pal Zileri to take over the management of the Vegas store for a period of one and a half years. At the end of the first year in this agreement, you will let us know if you would like to take over the entire lease, which will

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be a six-year agreement. If not, then Sarah LLC will have a six-month period to turn the store over to Simon. All financial aspects of this deal will be dealt with both of our lawyers. Please confirm your response in the next couple of days. Thank you so much and have a nice evening." You couldn't be more clear as to what the six-month period was for.

It wasn't for Sarah to come back in and resume operations; it was for Sarah and Simon -- for Sarah to turn back the store over to Simon, and Simon find a new tenant and move on, couldn't be more clear.

So in Mr. Torello-Viera's response, "Thank you for the time," etcetera, "As agreed, we have given mandate for our counsel to deal with yours on the

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management agreement. All the best." Okay. So any testimony that Forall was unaware of what was to take place after the six-month notice was provided would be -- would lack credibility, because they absolutely are aware that this is why the doctors are insisting on the six-month notice period. It is to turn the store back into Simon and that's what they did. And again, only after Forall had informed Sarah that it will not continue on for the rest of the term.

THE ARBITRATOR: All right.

MR. LEWIS: I don't want to belabor points, so I just want to look through my notes to see if I've covered everything that I've intended to.

THE ARBITRATOR: Mr. Lewis, I think what you're telling me

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based upon the one case you showed me is not so much an issue of waiver or course of conduct, but the -- you want me to rely on the New York doctrine of what's called the "equitable estoppel"; is that really what your pitch is to me?

MR. LEWIS: Well, Your Honor, I have said, estoppel and addition to the doctrines impossibility, frustration of performance. The course of performance I think really speaks to -- in addition to equitable to estoppel; I'm quite familiar with that doctrine. Again -- excuse me, but I thought I had mentioned that in my opening as well, but these are all that I think are relevant here, and that alter the obligation that Sarah would have going forward.

THE ARBITRATOR: All right.

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I understand your position. Take a moment and tell me if there's anything else you want to tell me in the opening.

MR. LEWIS: Let me speak about what you're going to hear from the experts, and I wouldn't steal their thunder. I think it's important to point out at the beginning that you're going to hear from Forall's expert that of the damages calculation that projects out through 2021. What's going to be -- why they think that's flawed -- there are numerous reasons why we think that's flawed, and our rebuttal expert will do a better job explaining it than I will, but for the sake of pointing this out in the opening, I think it's important to note that the expert's report does not take into account mitigation at all,

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and mitigation is another doctrine that I hope Mr. Farber keeps in mind throughout these proceedings.

Forall's failure to mitigate while it was operating the store, and I'm sure Mr. Farber has it in his time line; I certainly have it in mine. In the summer of 2015, Simon approached Forall directly and suggested to Forall that they move the store location to a smaller location with a dramatically reduced rent. This would have given an opportunity for -- instead of paying the flat rent, which was averaging approximately \$70,000 per month, rent would have been based on a percentage of sales, and again, in a smaller location. And Forall did not take advantage of that opportunity, and we submit that was a failure to mitigate.

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After the store closed, you will see no evidence of Forall attempting to bring in a different operator to open a different store, perhaps in a different U.S. market. Instead, again, 15 months passed and Forall simply sends a demand letter to the doctors asking for 4.5 million dollars, so you'll see no effort to mitigate, as required by law, after the store closed.

There is no reflexion or accounting for mitigation in Mr. Flaherty's expert report, and you'll hear from our expert why we think that's flawed. And again, we have damages being calculated through 2021. And in Mr. Flaherty's defense, he could not project or foresee how the world would have changed since he submitted his report. But now

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that we know, we have to account for the fact that in 2000 [sic], the economy was decimated. The Las Vegas economy was absolutely decimated. It is not recovered. The information that we pulled, the research that we've done shows that it's only recovered to the extent of approximately 10 percent of what it was in the years passed. So we would not think it would be equitable in any way to extend the full damages award, including 2020 and 2021, without taking COVID into account.

By no means do we believe that Forall is entitled to any damages whatsoever, but if Mr. Farber disagrees, there are a lot of factors, including the lack of mitigation that we submit should reduce any award substantially.

THE ARBITRATOR: All right.

14 (Pages 50 to 53)

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Mr. Lewis, thank you very much.
I appreciate your opening.
Thanks for the information you
gave me.

Mr. Brown, are you going to
handle this one?

MR. BROWN: I am, sir.
Thank you.

THE ARBITRATOR: Why don't
you proceed?

MR. BROWN: Very well. Bear
with me one moment. Despite what
you've just heard, and with all
due respect to my esteemed
colleague who I have enjoyed
working with on this case. It's
a very straightforward contract
action. 99 percent of what needs
to be determined on the law is in
the papers, in the documents
themselves.

This is not about the Las
Vegas economy. This is not
about, perhaps, even the doctor's

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inexperience in retail and
inability to run a profitable
retail store.

This is about an investment
group that approached Forall, the
claimant's investment group that
approached Forall and wanted to
be in this marketplace selling
luxury Italians fine made in
Italy menswear. Claimants have
tried to make this about
impossibility, frustration of
purpose, in a way and you're
hearing it with this -- this
reference to COVID and 2020 sort
of like a clause force majeure.
They fail woefully short of
meeting any of those legal
standards, as Mr. Farber will
well know.

The discussion that -- I
mean -- in some ways they've
turned it on their head. They,
themselves, without notice to

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Forall canceled the lease,
surrendered a lease, and
stipulated to a forced eviction
of, essentially, their contract
business partner.

The damage to the brand was
terrible. The personal affect
that it had on the employees at
the store, and the -- Forall's
management team was true and
dramatic. It was just the wrong
thing to do. And that is -- as
you'll see when we step through
the history of this case -- time
and time again what the claimants
did. They did the wrong things
each and every time.

There is a mention of a
failure to mitigate damages.
That is, on its face, false. At
every turn Forall attempted as a
good business partner, good
contracting, good faith effort to
mitigate damages at each and

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every step. They went so far as
to identify -- or first was they
-- they provided the claimants --
the claimants with the
opportunity and right and license
to sell product on the internet
in -- in 2012, February 2012.
They allowed that even though the
claimants had themselves already
launched their e-commerce and
website ahead of Forall's
authorization, approval. They
put an agreement in place
allowing them to sell to the U.S.
on the internet the Pal Zileri
brand on a nonexclusive basis. I
mean, that in and of itself in
the retail world is a golden
ticket.

They were -- the claimants
weren't able -- as many things,
they were not able to turn that
into the -- the revenue that they
should have, that was based on

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their own failings.

THE ARBITRATOR: Wait a minute. I see that Dr. Hamad is not with us. We'll give him the courtesy if he wants to take a minute.

Mr. Brown, let me ask you this" in Mr. Lewis's brief, he and Mr. Shah argue that under the internet agreement that your client had a duty to establish a website and that you didn't, and that the failure to do so he said contributed to the ability to sell the product.

MR. BROWN: Right.

THE ARBITRATOR: How do you respond?

MR. BROWN: Well, I almost fell out of my chair when I read that. Let's put a little spin on that, that is patently false, Your Honor. The documents show in the underlining discovery will

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show that. The documents show, in fact, that our client was being badgered by the claimant to allow them to start selling on their e-commerce platform. The claimant had engaged a website, an e-commerce vendor to establish and create this website. They launched it in advance of the internet agreement, which was ultimately executed in April, and the claimants went live with their website in February. I have all the documents. It's all in the e-mails. It might take some time to step through.

But they're trying to hinge in a somewhat poorly whereas provision clause in that internet agreement and try -- and it says -- it's not right in front of me, but I can certainly pull it up, that the claimants, Sarah, has requested and Forall has agreed

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to establish a website. Okay. That's how the language kind of reads in that whereas provision, but the agreement itself, and the testimony you'll hear from Palma Settini, from Luca Spano himself, and the documents show that the claimants, the doctors, were already pushing ahead with the e-commerce platform. The company was allowing them to do it. And the company didn't have its own e-commerce platform, and they were going to be launching that. And it discusses that once their website, the corporate website was up, these would be merged, and there would be links back and forth, but we weren't stopping them from going ahead; they were going head. So that's a false allegation. Unfortunately, many of them.

And they don't highlight

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them now, but they're in the papers and I'm going to be stepping through them. In fact, I anticipated going through it in this opening statement. One of the other -- if you read the statement of claim, remember who brought this action, it's actually the claimants. They filed a statement of claim saying that Forall was evicted from by Simon from the Forum shop Cesar Palace, because Forall failed to pay the rent. That's a claim in their action. Okay.

They didn't bring to anyone's attention -- they must have assumed that I didn't have the document. They didn't bring to the attention that they themselves had canceled the lease and surrendered it and stipulated to a forced eviction during our management of the store on the

16 (Pages 58 to 61)

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contract. So they're not talking about in that in their brief now, but that's been disproved. That was a false allegation. It's a false claim in the arbitration.

Another false claim that they have alleged, okay, they've alleged in their pre-arbitration brief that Forall guaranteed the lease with Simon. That's fiction. It's patently false and demonstratively so. There's a collateral -- in fact, it's exactly the opposite. There's collateral of assignment that was given at the onset of party's relationship for the lease from Sarah claimants to Forall. It's a security document for Forall that secured if Sarah decided to or whatever Sarah fell flat on its face, what have you, the intent there was that Forall will not lose its investment in the

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store, which was significant.

We split cost to build out the store. The build out was approximately a million dollars. We put advertising into this market. We did everything to support these people. And what did they do? Well, first off, they falsely alleged that we guaranteed the lease. The lease was negotiated exclusively by and between Sarah and the Forum shops. Okay. Those terms -- those financial terms that the doctors claimed that they were impossible to operate properly, they were struck by them. Those were their terms. Forall didn't make them do anything there. And then they have the audacity of claiming we have guaranteed the lease and that somehow the responsibility falls back on us. That's just a false statement.

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THE ARBITRATOR: What page do they say that Forall guaranteed the lease?

MR. BROWN: I have it right here. Page 6 of their brief, claimants pre-arbitration brief, other agreements B, the first paragraph in that section says, "In connection with the license agreement and lease, on or about March 2011 Sarah and Forall entered into certainly collateral assignment of lease. Pursuant to which Forall guaranteed Sarah's obligations pursuant to the lease." Patently false.

I mean, we all know, I think, on this call what a collateral assignment of lease is and what it does, and the terms of that agreement did not in any way obligate Forall for the payment of the lease between Sarah and Simon and Forum shops.

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And then the falsehoods continue. In the very next documents they discuss this internet agreement, where they claim Forall agreed to establish a website; also demonstratively false. As I mentioned before, Sarah had already entered into and was working a e-commerce vendor to launch a website at that time prior to the time the internet agreement was ultimately executed. And Luca Spano, who was a former employee, and frankly has its own axe to grind --

THE ARBITRATOR: Let me just note that someone named Monica Spano is showing. I assume that's Mr. Spano.

Mr. Spano, you're with us on the line?

MR. SPANO: Yes, I am. That's my wife.

17 (Pages 62 to 65)

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THE ARBITRATOR: Welcome just hang loose. I understand you're going to be our first witness.

And Mr. Brown, why don't you proceed.

MR. LEWIS: Mr. Farber, may I ask that since Mr. Spano is the first witness, that he not join right now.

THE ARBITRATOR: He's your witness, of course. If that's what you want.

So Mr. Spano, we'd like you to do the following: Does -- Mr. Spano who did you communicate with in order to be a witness here today? Who did you work that out with?

MR. SPANO: Mr. Brown.

MR. BROWN: That's not true.

MR. SPANO: I didn't understand the question. I'm sorry.

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THE ARBITRATOR: Who spoke to you about being a witness this morning?

MR. SPANO: The attorney of Bachar.

THE ARBITRATOR: And who is that, Mr. Lewis?

MR. SPANO: Yes.

THE ARBITRATOR: Does Mr. Lewis have your cell phone number?

MR. SPANO: Yes.

THE ARBITRATOR: So here's what we'd like you to do: So we'd like to you drop off. Mr. Lewis is asking that you drop off this discussion now and that you stay where you are. Mr. Lewis is going to call or Mr. Shah who works with Mr. Lewis will call you on your cell phone and then you'll join us.

Is that okay, Mr. Lewis.

MR. LEWIS: Thank you,

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Mr. Farber.

THE ARBITRATOR: So why don't you do that. All right. We'll see you in a little while.

MR. SPANO: Thank you.

THE ARBITRATOR: Thank you, sir.

Go ahead, Mr. Brown.

MR. BROWN: And I was just -- I hadn't seen him come on the screen, but I was just indicating that Mr. Spano left the company, resigned in a bit of a huff in 2014. Okay. He has his own axe to grind here. But the documents -- what he did, what he worked on, clearly show, in the course of these party's feelings, that Mr. Spano and Forall were supporting the doctors, supporting the store, did everything to the T under the party's agreements, and he's not going to be able to walk away

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from what he put in e-mails years ago and what the agreements actually say.

So again, back to the website. That's a false allegation as well.

The third thing that was also false in the brief on Page 8 where they claim that Sarah was not provided with a full credit for the construction costs. Okay? At the time that Sarah handed off management of the store to Italnord, that was done in the context of a consent by Forall, but we were not parties to those agreements. But what is misleading about this credit, I notion, okay, is that there was about \$38,000 that was due to be credited, again, for the construction cost, but it -- the arrangement was that it was to be credited based upon 20 percent

18 (Pages 66 to 69)

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2 discounts from purchases by Sarah
3 to the store.

4 Sarah had not purchased
5 sufficient product up until the
6 point in time, because they were
7 only running the store for two
8 years. So they weren't due this
9 \$38,000 stub, I'll call, it
10 because they hadn't ordered
11 sufficient product yet.

12 Remember, the agreement was
13 for a ten-year deal. They were
14 going to run a store for 10
15 years, so this was a longstanding
16 relationship and the credit to
17 the construction cost was going
18 to be based 20 percent discounts
19 against product.

20 So had they ordered more --
21 purchased more product, they
22 would have gotten this credit.
23 But to show the good faith that
24 Forall was operating in all
25 contexts, and essentially the bad

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1 PROCEEDINGS
2 faith that the doctors were
3 proceeding with, the doctors
4 required Italnord at the time
5 that it came on to manage to pay
6 them that \$38,000.

7 And the evidence will show
8 that Italnord did pay them that
9 \$38,000, and we, Forall,
10 recognizing this, credited
11 Italnord the \$38,000. So it's --
12 it's ingenuous to claim that
13 money wasn't paid to them when in
14 fact it wasn't yet due, and even
15 though it wasn't yet due, we
16 credited to the managing agent
17 that came in that was helping
18 out, essentially, Sarah. Also,
19 at that time with Italnord.

20 The claimants received
21 \$140,000 from Italnord as
22 so-called key money. Key money
23 is a big term in that industry
24 out in Vegas, but Italnord paid
25 Sarah to take over the operation

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1 PROCEEDINGS
2 of the store. Okay. So they got
3 money back for having a
4 professional manager step in for
5 them. It's really kind of
6 ironic.

7 Now, another big thing that
8 I want to discuss, and Mr. Lewis,
9 in his opening, really muddled
10 the waters, I would say, on it,
11 and I do not suggest
12 intentionally. But this idea
13 that we did not notify them of
14 our intentions at the -- towards
15 the end of the management
16 agreement by Forall, this is in
17 2016, okay.

18 THE ARBITRATOR: Before you
19 get to that whole episode, Mr.
20 Lewis, you heard, in his argument
21 said -- because you mentioned the
22 failure to mitigate -- said that
23 the landlord had -- Simon had
24 approached and talked about or
25 offered a smaller store where the

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1 PROCEEDINGS
2 rent would be based upon some
3 percent of income rather the very
4 expensive lease that you had, and
5 he claimed that you're -- your
6 client wrongfully refused that,
7 and implied that that was
8 unreasonable, or he didn't quite
9 say that, but that's the
10 implication of it. How do you
11 respond to his point in that
12 regard?

13 MR. BROWN: That's in
14 accurate. All options were on
15 the table for Forall. We were
16 genuinely trying to find a
17 solution that worked for the
18 brand, worked for the company,
19 and also coincided and mutually
20 aligned the interest of the
21 claimants.

22 There were many discussions,
23 actually, had at that time, all
24 of which were attempts to
25 mitigate, find solutions, find

19 (Pages 70 to 73)

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1 answers.

2 We were operating this
3 store. Okay. They're going to
4 try to say that we didn't do it
5 profitably. That doesn't have
6 any bearing on legal and factual
7 issues.

8 THE ARBITRATOR: Let me just
9 focus on the question I asked.
10 What about this incident with the
11 offer to move to a smaller
12 location?

13 MR. BROWN: The proposed
14 space from Simon, and the -- we
15 have witness that will talk more
16 readily to this than I can.
17 However, the proposed space was
18 in an off corner four-foot
19 traffic in the Forum shop; we
20 were not interested in that
21 space.

22 This location or this store,
23 Mr. Farber, was ideal. It was
24 beautiful. It's an incredible
25

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1 mall. The doctors just may have
2 struck a lease that was too rich
3 for them, but that wasn't -- that
4 was what they saddled themselves
5 with. That wasn't what that was
6 the issue for Forall and its
7 branding and its marketing.

8 So that store that Simon
9 had tried to -- let's put it this
10 away: There was proposal made
11 that we could take a smaller
12 store. That was not -- we
13 evaluated. It my clients went
14 out and looked at it, but it was
15 deemed not the business decision
16 that they wanted to make.

17 Because if you put yourself
18 -- and it was also off the track
19 of the luxury clothing items. It
20 was in a different mix in the
21 mall. As you might know, in
22 malls they do different stores
23 kind of grouped together based
24 upon what the foot traffic might
25

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1 be and the clientele might be
2 looking at those various
3 competitors.

4 THE ARBITRATOR: I have your
5 answer and I understand. As long
6 as we're talking about
7 mitigation, though, tell me,
8 Mr. Brown, and we'll get into
9 this, I think, with the experts a
10 bit, but what is your perspective
11 on or what is the testimony going
12 to show me on what happened to
13 the brand and the sales of the
14 brand in the United States after
15 the store was closed?

16 MR. BROWN: It was a
17 monumental hit to this brand that
18 they still have not recovered
19 from. Okay. This is a
20 longstanding Italian's clothing
21 line that dates back to the 80s,
22 actually, early -- late 70s.
23 They -- this type of closure hit
24 the marketplace. This is a small
25

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1 industry. Everyone knows
2 everyone. This -- going back to
3 Italy --

4 THE ARBITRATOR: Did the
5 Beverly Hills store actually open
6 or not?

7 MR. BROWN: No. So -- and I
8 have that on my opening remarks.
9 They were -- no. The Beverly
10 Hills store did not open. The
11 doctors, despite trying
12 impossibility of turning the
13 profit in Las Vegas.

14 So they opened in September
15 of '11, 2011. By December 2011,
16 the doctors were going to Simon
17 and seeking concessions on the
18 rent. And they were claiming to
19 our client despite our genuine
20 and best efforts and working well
21 together, they were asking for
22 concessions for products three
23 months after opening.

24 That being said, in
25

20 (Pages 74 to 77)

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September 2012, a full year later, they're in advance lease negotiations in Beverly Hills. Without -- without bringing this for the approval, and to my knowledge -- you know, again, Mr. Spano will testifying to this perhaps, but they never brought it up to corporate Forall that they were looking at a space in Beverly Hills. And they still loved the brand.

They just didn't like Las Vegas anymore. Well, that is not really how an appropriate contractual relationship works. They had guaranteed performance personally. We were invested. We had done build out in Las Vegas. But the Beverly Hills, you know, negotiations by the claimants goes to show that they were still sold on this brand. They were trying to just take it

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elsewhere. But it really puts a lot of -- it shows the disingenuous nature of the claims now that they, themselves, could never make this work, because of brand recognition or whatever else, the economy, that type of stuff. All right.

So one other thing that is a big key is this notion of waiver. Okay.

THE ARBITRATOR: Hang on before you get to that. You were about to tell me your client's view in connection with the notion of the closing of the store, and I cut you off and diverted you. I don't want to divert you too much that you forget about it.

MR. BROWN: Thank you. And yeah. This does go to mitigation of damages. There was no obligation for Forall to cut a

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new lease with Simon, a cheaper lease based on store sales.

Again, we were evaluating whether or not to proceed and take over the store. Okay. And the doctors would not communicate with us. They would not. We had three successive correspondence stating we want an extension of time. We're still evaluating. Please advise and get back to us about you intention to take over the store in September. We need further and additional time. No responses.

How could we -- we weren't on the lease. How could we just willy-nilly decide that we're proceeding with either downsizing the store or continuing the current operation at that time. There was no obligation for us to mitigate those damages, because those weren't actual damages yet.

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We were -- the store was still in operation.

You -- you have to mitigate damages once there's a breach. Okay. And at that time there was no standing breach. The breach came later with no notice to us, and that's why Mr. Spano's testimony, frankly, is of limited value at this point because he's two years gone. The breached occurred in 2015.

And I'm moving around a little bit here and I apologize. But on that point, and I'm going to pull up on my screen right now. Mr. Lewis spend a good deal amount of time in his opening saying that there was no insistence upon a \$900,000 purchase until a year or 14, 15 months after the closure of the store. Okay. That's just false. And it -- it's

21 (Pages 78 to 81)

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demonstratively false.

And I'm going to bring up -- bear with me one second. I'm going to share my screen for a moment. This is an exhibit that is on the joint exhibit list. It is -- bear with me. It's Exhibit 256.

THE ARBITRATOR: Is this in the joint exhibit book?

MR. BROWN: It is, Your Honor. I'm sorry, 156. And it's Bates label Forall 280 to 281, and with your permission I'm going to share the screen.

This is a letter dated March 9, 2016, to Sarah LLC care of Bachar Hamad. Okay. This followed two successive pieces of correspondence. One from myself to counsel and another to Paolo Torello-Viera, CEO of Forall to the doctors. And in this letter, basically we had no response to

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either of those prior correspondences. "By letter dated February 25th," etcetera. "Consequently, effective September 1, 2016, Sarah shall again be -- assume possession of Pal Zileri store."

We go on to say that, and remind them, that they have minimum purchase requirements. Okay. So Mr. Lewis was heard earlier saying that this was never told to them until 15 months after the closure of the store, that this was an opportunity that Forall saw to try to collect money, four and a half million dollars. Wrong. Okay.

We wanted a working partner in Las Vegas. This brand was -- this was a flag ship store in a key and critical market that we wanted to succeed. And it's --

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so here we have another demonstratively false statement by claimants. Now, the reason we were telling them this is because they had to take back the store. They had to get the fall and winter collection on site and in inventory.

These things take time. We have to manufacture. We have to ship. We have to get it to them. This was all done with the best intentions. Not -- it's not a got-you-moment. Okay. So that -- this is a key piece of evidence, but it's all in the documents as we go through it.

By the way, and then we never heard from them again until July. And they -- and Mr. Lewis references that -- well, there was a new tenant, and they got the new tenant. Simon notified the new tenant in July 6th.

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Well, the doctors surrendered a lease on June 14, almost a month prior. Of course Simon got a new tenant. He surrendered the lease the impossibilities are thrown out of the window, because you can't create the impossibility and claim you can't run a store because you turned the store back over.

The hit to the brand will be testified to by Ms. Settimi. She's a longstanding treasurer and secretary of the company, as well Mr. Paolo Torello-Viera. It was incredible and it was not something that our clients could just go down to the street and open a new Pal Zileri.

The brand had been -- had sustained massive damage and reputation. This -- we're talking about luxury items. When a luxury store goes out in the

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dead of night because there's an eviction, it -- it hurts what we're trying to do with our clientele. And there's longstanding very loyal customers. These people by thousands of dollars worth of goods every time they come in. They come specifically to the store. That -- we'll get into this in these documents.

But the claimants produced a tremendous amount of this type of literature in the discovery. And these people come expecting a certain thing, and they buy. They buy throughout the year. When a store goes out, they move on.

One other thing that will come out in testimony is that the claimants themselves were absentee owners. They were investors. The doctors, they

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worked and lived in Chicago. They had practices up there. They weren't on site. They weren't selling. They weren't in the store very often. They hired at various points different retail representatives who had experience in the industry.

THE ARBITRATOR: Mr. Brown, almost the same question I asked Mr. Lewis: Why is it important for me to know this? I mean, if Dr. Hamad, presumably, I don't know what kind of doctor, I'm guessing he's a physician, and he's busy in Chicago area. What's wrong with him hiring someone, and if it works, it works. If it doesn't, it doesn't. Why do I have to know that and get involved with who they hired, and how they interviewed, and how often they were there? Why is that relevant

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to what I have to decide?

MR. BROWN: Right. And I agree 100 percent. It is only relevant to counter what I see as the main thrust of claimant's case here. And it's that we couldn't make it work. It was impossible. This was doomed to fail from the beginning.

They had experience retailers come in and tell them what they needed to do, and time and time again they didn't do it. And they didn't implement the purchases that their people were telling they should. That Mr. Spano and other people within Forall were saying this is what you should have in the store. They just didn't do it, and there's just e-mails to that effect. So it's only relevant as a counter to claimants argument.

THE ARBITRATOR: Counsel,

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you both have told me for different reasons why I should be hearing testimony about who did what that lead to the failure of the store, so if you both want it, I'll hear it, but just understand I question if we're going to spend -- you know, you guys -- the clients here are spending money on a lot of lawyers, they're spending money on me, and part of my job is to only focus on the issue that is really related to what I decide.

So I'm going to let you do it because you both want to do it, but just understand that I question the utility of a lot of testimony about why the stores failed. I know they failed. Go ahead.

MR. BROWN: I will be objecting to testimony that's not relevant, and I do view this is

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not relevant. It only counters to the extent it's being brought in. I will also bring those portions in.

Another claim that was false, the and this is -- it goes to the veracity and credibility of the witnesses, Your Honor. They claim -- they filed and the Amended Statement of Claim, which was ultimately rejected by Mr. Farber, the arbitrator. However, in that document, they alleged that they had no knowledge of a prior Las Vegas operation or store.

And it's -- it's patently untrue. And we demonstrate as such, because the original investment group that approached Forall, Bachar Hamad and he had some other partners. One of those partners, and it's listed in the business proposal plans,

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was an employee at the Pal Zileri store, and it states that the business proposal.

So it's just -- they knew what they were getting into. They had done their due diligence. They loved the brand. They wanted the ganache of Pal Zileri.

Pal Zileri is very big in the middle east, it's very big in Asia, very big in Europe, and it had great potential here in the United States. I mean, it's still operating in the states. Still sells out of the show room down New York City in 5th Avenue. It's in Saks Fifth Avenue, it's in, you know Nordstrom, all of these high-end stores. They wanted their part and they got it and then they just didn't live up to their deal.

So as I mentioned, they

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claim that they failed to pay construction costs, we can demonstrate that's not true. They claim that we failed to do sufficient advertising, that's untrue as well; we have the documents to demonstrate it. We lived up to our agreement to every cent and actually over spent under the agreement for matching advertising costs.

They claim that we failed to advise as to our intentions at the end of the management agreement; that's demonstratively false. They claim that we got evicted because we failed to pay the rent; that's demonstratively false.

One point on this waiver or estoppel issue, Your Honor, this Kamco Supply case, 2017, Second Department, that Mr. Lewis is relying upon is completely

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distinguishable. Okay. In that case, which the -- the purchasing party had -- had not even bought, like, two percent of what they had committed to, and the parties went on for several years, and in -- the courts go on to say that no default was ever noticed, no reservation of rights was ever provided. Okay?

And the court even spent time saying that even if they had breached, there was no -- it was not going to serve as a -- an inability respectively to insist on the agreement. Okay. And that's what we -- so we have at every turn reserved full rights in this case, and it's in every letter, every agreement. We put them on notice.

And they only ran the store for two years. The first year they met their minimum. The

24 (Pages 90 to 93)

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second year, they're trying to go to Beverly Hills, and they stop buying and we consented to a professional management company coming in because we're good partners.

So there's no established course of conduct of letting them go year after year where they didn't meet the minimum. They ran the store for two years. The first year they met the minimum. The second year, they were doing what they were doing. We had full reservation of rights on a consent for Italnord to step in.

They came back after Italnord to run the store for three months, at which point we took over, because we're good business partners and we wanted that store to work.

The last thing I'm going to say is: This notion that we knew

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that they were going to surrender the lease and they had approached Simon in October of 2014 and there's e-mail to the effect, Mr. Lewis was touching on that. Okay. As soon as we learned in October or November of '14 that Simon had entered into a -- it was a letter agreement with Simon and Sarah saying that Simon could go out and find a new replacement tenant. As soon as Forall learned about that -- it wasn't disclosed to us; we learned about it, and we went through the roof, and there's documents to that effect.

We said, "This is anticipatory breach. You can't just surrender this lease. We have an interest in the store. You have to keep running it," etcetera, etcetera. We got a withdrawal letter executed

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between Simon and Sarah saying that that letter agreement was null and void, because we did not want them to surrender the lease.

So they never -- everything was underhanded here, never above board, not good partners to work with, and that's all in the documents. So that argument needs to be rejected, that we somehow knew that their intention was to terminate the lease. When they went to do it, we objected, and we got them to withdraw it, and they did withdraw it. There's a letter agreement to that effect.

You know, last but not least, Mr. Lewis brought up that e-mail from Amar or is it Bachar Hamad to Paolo Torello-Viera. Paolo says, "As agreed, we're going to get this to the lawyers to iron out the management

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agreement." In the management agreement, the controlling document, there's no mention that Simon could -- Sarah could turn the store back.

In fact, that was absolutely not the case and all rights were reserve, license agreement remained in effect, we were going to run the store and take on the responsibility of the store for the term of the management agreement, and we abided by that. And we were evicted even before the end of the term of the management agreement to great impact upon the company, the brand, costs, the employees, the people that were trying to make this work. So that's what this case is about.

THE ARBITRATOR: Okay. Mr. Brown, do you need a moment or are you finished?

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MR. BROWN: One moment. About the damages portion of things, Your Honor, we're going to have very, very good testimony from our side on that. The -- I just would point out that they filed a supplemental claiming that you know, the damages should include the COVID impact upon the Las Vegas market.

That's a -- an event that occurred four years post breach. They don't get to have the benefits of the vagaries of the market on some later date. Not to mention it has no impact on a minimum purchase agreement. Whether or not the store or would have been closed for a couple of weeks, which was a duration of this impact out in Vegas.

They had minimum purchase requirements for spring, summer, inventory, which had to be

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purchased by January. So January 2020, they would have needed to make the purchases for that line, and spring, fall, winter those purchases had to be in store by August, September the latest. So it's really not something that a lot of time should be spent upon.

And they tried to wiggle their claim down by saying there's all this variable cost and what have you, and there's just no basis for that particularly in the context of this party's relationships.

THE ARBITRATOR: Okay.

MR. BROWN: One second. Just to confer with counsel.

THE ARBITRATOR: All right.

MR. BROWN: Just going back to the documents themselves, Your Honor. The -- all waivers, any modifications had to be in

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writing. Okay. There's full integration clauses in every material agreement here. Parole evidence should not be considered, does not have to be considered.

It's clear what the parties intended. Forall lived up to its bargain at every turn and was a good partner, and they did not have that in return. So their investment, the claimant's investment perhaps did not go as they would like, but they chose to surrender the lease and the personal guarantees on that lease in -- in favor of their obligations that they owed to Forall, their working partner.

And that's too bad. Because had there been more of a meaningful conversation, had there been more -- you know, someone flew to New York and had

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a sit down, perhaps, something to that effect, things could have been worked out and they were not.

And they chose to cover themselves on the personal guaranty of the lease, because they viewed that, perhaps, as their biggest liability. And they chose to let Forall just dangle in the wind on their store, and never mind the impact of the brand and the employees and the people trying to make this work all those many years.

THE ARBITRATOR: Okay. Is that it, Mr. Brown?

MR. BROWN: Yes, sir.

THE ARBITRATOR: Thank you very much. Guys, what we're going to do is we're going to go from 9:30 to 5:30 every day. We'll take one morning break of about 15 minutes, one afternoon

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break of about 15 minutes. We'll generally take lunch between 1:00 and 2:00. So I'm just telling you this so you understand our scheduling.

And I think it might be an appropriate point now to take our 15-minute break. Mr. Lewis can then call the first witness, and we'll proceed accordingly.

So why don't we take a break now. I've got -- and let's be sharp about it. I've got 11:05, so at 11:20 I'd like everybody to be back at the meeting. All right.

Thank you very much everyone. We'll see you in 15 minutes. All right?

(Whereupon, a recess was taken at this time.)

THE ARBITRATOR: Mr. Brown, let me turn to you. I note that I have the books that was given

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to me. I have joint exhibits. I also have something denominated as Claimant's C Book. Am I correct, Mr. Brown, that you object to my receipt in evidence of all the documents that are in Claimant C Book?

MR. BROWN: Yes. I think with the exception of just one document that we kind of resolved, and I -- I don't quite recall if that came out of that book or not before Rodney got it to you, but yes. Many of the -- yes. That's right.

THE ARBITRATOR: Okay. So let me just ask you this: Many of these documents, and I'm just -- I have not read the documents, because I won't if I'm going to sustain the objection, but I'm looking at the index right now. Many of these documents seem to be financial documents, P and L

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statement balance sheet, product purchase schedules, and so on. What's the basis of your objection to those?

MR. BROWN: Well, I have a relevancy objection to them, A. B, I have an authentication objection to them, and --

THE ARBITRATOR: To P and L statements, you have a -- hold on.

Maggie, are we on the record?

THE COURT REPORTER: Yes.

THE ARBITRATOR: What's the authentication objection?

MR. BROWN: I would anticipate a witness would have to say that these are accurate, and these are -- how they were compiled, who produced them, who made them. Some of these were produced in discovery, and I don't know where they came from.

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Others were given to me post discovery, and that was another basis for some of the objections in the later documents.

But the ones with -- I have my list here.

THE ARBITRATOR: I want to know what exactly -- in terms of relevance, that's not going to serve as a basis for an objection, because I'll take that and, you know, you can always move to exclude it at a later point if it really has nothing to do with anything in connection with this case, but -- and then I've got some documents called "Litigation Services Handbook," "The Role of Financial Expert," "Expert Witness," what are the objections there?

MR. BROWN: Can I go in turn, because I'm looking at the list myself? The Exhibit 14 was

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-- was purported -- was produced by claimants in this case, and it was purportedly a balance sheet of a Forall USA or Forall Nevada operation as of '08, '09 and 2010. I just -- I don't know where that came from, so I was looking for authentication on that from a witness. They had an allegation earlier on in their amendment statement that there was disclosure of a store made, and then all of a sudden they're producing financials of that store, etcetera, etcetera. So I had an objection standing on authentication.

The next 40 through 46 are financial statements, looks like, or an invoice summary. Those were produced in the discovery. I don't believe they're relevant, but I'll withdraw my objection at this time.

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THE ARBITRATOR: All right. Then 40 through 46 are going to also be admitted into evidence on consent.

Go ahead. Now, what about 64 through --

MR. BROWN: 64 there was no description that I could identify, but I think Rodney and I resolved this. This was an exhibit that was actually in my exhibits. I think it was 164.

Rodney, do you know offhand?

THE ARBITRATOR: Doesn't matter. It's going to be in evidence. Keep going.

MR. BROWN: So 65 and 66, I don't believe they were able to locate -- there's no identified -- I wasn't able to view these documents. They didn't produce them to me. So this IR is not a number that's --

THE ARBITRATOR: I don't

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understand "unable to locate".

MR. BROWN: Neither do I, but that's what I was told.

THE ARBITRATOR: They're in this book, so someone located them.

MR. BROWN: Rodney, can you talk to that?

MR. LEWIS: I'd be happy to. Yes. Mr. Farber, the exhibit that have the IRs are documents that were part of our production. What I had committed to Mr. Brown was I was going to see if I could find a corresponding claimants Bates number that was associated with those documents. We weren't able to find those. So with Mr. Brown's -- I take him at his words that he did not receive those documents, even though it was queued up to go in our production, but I don't think that's where the story ends.

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I mean, we provided those documents to Mr. Brown, and I would say either again or with the understanding we thought we had included it in our original production, but we provided to him 10 days ago for him to review, and to see if he had any objection other than just getting the Document 10 days ago, and I don't know if there's another objection to the documents, but I'll let Mr. Brown speak to that.

THE ARBITRATOR: Well, if they were produced, why don't they have a Bates number?

MR. LEWIS: That's what I was saying, Mr. Farber. We could not find a corresponding Bates number of the document, but the IR shows that it was in our queue to be produced, that's -- that's what would show in our label of the production number, our

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2 internal number as we ran the
3 production.

4 THE ARBITRATOR: Mr. Brown,
5 is there anything substantively
6 in these document which makes it
7 significant enough to exclude?

8 MR. BROWN: Respectively,
9 Your Honor, and you may not love
10 this answer, but there were so
11 many documents flying back and
12 forth in the last 10 days, that
13 if I hadn't gotten it before, and
14 there was no claimants Bates
15 label to it, I was keeping an
16 objection on it for coming in now
17 because it was -- you know.

18 THE ARBITRATOR: What about
19 67 and so on? These are also
20 IRs. Is it the same point?

21 MR. BROWN: 67, well, the
22 once with the IRs, yes. That is
23 the same point. 67 has a Bates
24 labeled to 71. Again, I had an
25 authentication objection to

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2 those. I just don't know, you
3 know, what system they were run
4 from, if they were credible.

5 THE ARBITRATOR: So they
6 have a Bates so they were
7 produced, is that right?

8 MR. BROWN: So I'll withdraw
9 my objections to those at this
10 point.

11 THE ARBITRATOR: So then 67
12 through 71 are in. All right.
13 Now what about 70 -- I'm sorry.
14 67 through 72 are in.

15 MR. BROWN: Not 72.

16 THE ARBITRATOR: Okay. What
17 about 72.

18 MR. BROWN: It was an IR
19 document. No Bates label. I
20 don't believe I was provided with
21 it during discovery.

22 THE ARBITRATOR: What about
23 74, 75?

24 MR. BROWN: After
25 discussions with counsel, I

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2 didn't know what these were, but
3 73 to 86 are documents apparently
4 that their expert either referred
5 to or relied on. Only the first
6 three are actual referenced in
7 his report. The others are not.
8 Although, he might have -- these
9 financials specifically are not
10 referenced in his report, so that
11 was my objection at this point.
12 If he was going to have relied on
13 them, he should have included
14 them in his report.

15 THE ARBITRATOR: All right.
16 So you want me to keep them out
17 for that reason?

18 MR. LEWIS: Mr. Farber, can
19 I speak to that?

20 THE ARBITRATOR: No.
21 Because the objection is
22 overruled. I'll take them. So
23 the documents are going to be
24 received 73 through 86 are going
25 to be in. What about 89 through

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2 95?

3 MR. BROWN: This was a post
4 discovery production. I haven't
5 gotten them. When I got the exit
6 list, I haven't seen these. I
7 think that Rodney indicated they
8 may have been received from
9 Simon.

10 Simon did, you know, refused
11 to comply with my subpoena. I
12 don't believe they should be
13 brought in at this time.

14 THE ARBITRATOR: Mr. Lewis,
15 let me hear you on these, 89
16 through 95.

17 MR. LEWIS: Well, one of the
18 documents, and I apologize I
19 forgot which one, one of these
20 are tax returns, so those did not
21 come from Simon. So those should
22 be a separate discussion. So the
23 tax returns were not produced by
24 Simon.

25 The other exhibits in that

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2 range were, and I would say two
3 things. The -- the lease
4 required.

5 THE ARBITRATOR: Hold on.
6 Mr. Brown, do you object to the
7 2012 tax return?

8 MR. BROWN: Just on a
9 relevancy basis, Your Honor.

10 THE ARBITRATOR: That will
11 be in.

12 Mr. Lewis, go ahead. What
13 about the others?

14 MR. LEWIS: Sure. All the
15 operators had to, monthly, send
16 their sales to Simon so Simon
17 could track those sales. So this
18 is a Simon's compilation of the
19 sales for the store for those
20 years in question.

21 THE ARBITRATOR: Did Simon
22 supply you with documents in
23 response to the subpoena that
24 Mr. Brown served?

25 MR. LEWIS: No. He supplied

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2 them to us informally, and they
3 did not respond to the subpoena
4 to either party.

5 THE ARBITRATOR: When were
6 these documents sent to
7 Mr. Brown?

8 MR. LEWIS: 10 days ago.

9 THE ARBITRATOR: Mr. Brown,
10 what's your objection?

11 MR. BROWN: I have an
12 authentication objection, Your
13 Honor. I subpoenaed this party.
14 I got a one sentence letter back
15 with no contact information
16 saying that for legitimate
17 reasons they're not complying
18 with the subpoena. They've
19 produced these -- I think you
20 have a real authentication issue
21 here.

22 MR. LEWIS: If I may say
23 this one last thing, these are
24 documents that we asked from
25 Forall. Forall had to compile

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2 these documents to provide them
3 to Simon, in a different format
4 perhaps, but they have to send
5 the monthly sales, and those were
6 not produced, and we had a
7 document request, Request Number
8 8, that asked for these
9 documents, and they weren't
10 produced.

11 MR. BROWN: We've searched
12 our records, we didn't come
13 across these. I note there was
14 no -- Sarah was running the store
15 in '11 and '12, those reports
16 were not produced, why not?

17 THE ARBITRATOR: Gentleman
18 I've heard enough. So as it
19 stands right now, all the
20 documents that are in claimants
21 book are going to be received in
22 evidence, except not at this
23 point, 65, 66, 72, 89, 91, 92,
24 93, 94, 95.

25 Mr. Lewis, if you want to

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2 get these documents in later on,
3 you'll have to lay the foundation
4 for them.

5 MR. LEWIS: Mr. Farber, one
6 is not a document produced by
7 Simon. 91 is a publicly
8 available article.

9 THE ARBITRATOR: As I said,
10 you'll have to lay the foundation
11 for it later on, because I'm told
12 they were only produced 10 days
13 ago, and I don't understand why
14 they weren't produced during
15 discovery, so that's my ruling
16 right now. You can -- you can
17 try to lay the foundation later
18 on.

19 Now, let's open up
20 respondent's book, the R
21 documents. Mr. Lewis, what's
22 your problem with -- this one I
23 don't have a -- yes, I do. Okay.

24 Let's hear what your problem
25 is with these documents starting

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2 with 117.

3 MR. LEWIS: Let me pull up
4 an e-mail that I sent to
5 Mr. Brown. Quite frankly, I
6 thought we had resolved a lot of
7 this.

8 THE ARBITRATOR: I'm sorry.
9 I'm having trouble hearing you,
10 Mr. Lewis.

11 MR. LEWIS: Frankly, I
12 thought we had resolved a lot of
13 this as Mr. Farber instructed us
14 to try to do so after our last
15 call, so I thought we had covered
16 some of this ground and resolved
17 these issues on many of them.

18 MR. BROWN: And Rodney,
19 that's true, I think, but, you
20 know, step through would be due
21 to the late nature of what we
22 were complying and had to get
23 over to the arbitrator, I was not
24 able to, you know, incorporate --

25 THE ARBITRATOR: And here's

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2 what we're going to do: Since
3 we're starting with claimant,
4 we'll stop here. Right after
5 lunch, I will come back and ask
6 which of the respondent's
7 exhibits you still maintain an
8 objection to, Mr. Lewis.

9 And guys, the reason I do
10 this right now at the beginning
11 is because I'm not going to spend
12 hours going through documents.
13 In arbitration, we don't do that.
14 We do it much quicker, and I've
15 now disposed of all claimant's
16 documents, all of respondent's
17 documents, the joint exhibit
18 books are received in evidence on
19 consent, and after lunch we'll go
20 through respondent's book, since
21 -- and you guys -- Mr. Lewis,
22 you'll tell me what you still
23 maintain on objection to, and if
24 I can rule, I'll rule, and that's
25 it.

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2 Okay. Mr. Spano, is he your
3 first witness, Mr. Lewis?

4 MR. LEWIS: He is.

5 THE ARBITRATOR: Mr. Spano,
6 good morning. Are you alone in a
7 room, Mr. Spano?

8 MR. SPANO: I am.

9 THE ARBITRATOR: Mr. Spano,
10 I'd appreciate your standing for
11 a moment and adjust your monitor
12 so that I can still see you. I
13 want to see your face.

14 So, Mr. Spano, would you
15 please raise your right hand? Do
16 you solemnly swear the testimony
17 you're about to give in this
18 arbitration proceeding will be
19 the truth, the whole truth, and
20 nothing but the truth?

21 MR. SPANO: Yes, I do.

22 THE ARBITRATOR: Could you
23 be seated, sir. Spell your full
24 name for me, and also let me have
25 an address, which can be home or

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2 work, your choice.

3 MR. SPANO: Luca, L-U-C-A;
4 Spano, S-P-A-N-O. My home
5 address at the moment is 1100
6 Gulf Shore Boulevard North,
7 Apartment 107, Naples, Florida
8 32102.

9 THE ARBITRATOR: Mr. Lewis,
10 are you handling this one?

11 MR. LEWIS: Yes.

12 THE ARBITRATOR: Mr. Lewis
13 is going to be asking you some
14 questions. What I want you to do
15 is: After each question, I want
16 -- don't interrupt him while he's
17 asking a question. After each
18 question, I want you to pause.

19 Mr. Brown, are you handling
20 this witness?

21 MR. BROWN: Yes.

22 THE ARBITRATOR: If
23 Mr. Brown says the word
24 "objection," do not answer the
25 question until I tell you whether

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or not you should do so. If Mr. Brown does not say the word "objection," then I don't want long stories. I just want the answer to the question. So whatever Mr. Lewis has asked you, you respond to. All right?

MR. SPANO: Yes, sir.

THE ARBITRATOR: And that's the way we are going to proceed.

I will have different instructions for you when Mr. Brown asks you question.

Mr. Lewis, why don't you proceed?

MR. LEWIS: Thank you, Mr. Farber.

* * *

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DIRECT EXAMINATION OF MR. SPANO

L U C A S P A N O, the witness herein, having been first duly sworn by the arbitrator, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. LEWIS:

Q. I believe it's still morning on east coast. Good morning, Mr. Spano. How are you?

A. Good morning. Good. Thank you.

Q. Appreciate you taking time out of your day to testify today.

Mr. Spano, can you please explain to Mr. Farber what your role with Forall was while you were employed there?

A. I was the Director of Sales for Forall USA.

Q. And what were your responsibilities as director of sales for Forall USA?

A. Well, I was following up the sales reports and pulling up all the

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customers that placed orders with us and I did sales for Forall USA.

Q. And how did you come to become acquainted with the doctors Hamad? How did you meet the doctors Hamad?

A. Well, we had another store prior to the one that Dr. Hamad opened, and one of his friends was a customer of ours, and basically he contacted me saying that there was somebody interested in opening a Pal Zireli store in Las Vegas.

Q. And did they ultimately introduce you to the doctors?

A. Correct. Let me rephrase that. I met Dr. Bachar; that was my initial contact.

Q. And do you recall approximately when this was?

A. I'm sorry.

Q. Do you recall approximately when that was?

A. I believe it was 2012, 2013, probably. 2012 maybe. About 2012, I

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believe. Yes.

Q. Well, do you recall the store opened in 2011?

MR. BROWN: Objection.

THE ARBITRATOR: What's the objection, Counsel.

MR. BROWN: Leading.

THE ARBITRATOR: In an arbitration leading is fine, but if it's really heavy leading, guys, it's not going to be worth much to me. So I'll take it.

You can answer. Did the store open in '11? That's the question.

THE WITNESS: I believe so.

Q. So you met the doctor some time before then?

A. Correct.

Q. Did you participated in the plan for the Las Vegas store to open in 2011?

A. Absolutely, yes.

Q. What was your role, as you

32 (Pages 122 to 125)

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1 DIRECT EXAMINATION OF MR. SPANO
2 recall, in preparing for the store to
3 open in 2011?

4 A. Well, I was basically a middle
5 man like I am with -- with the -- every
6 other customer. Meaning that the
7 initial deal was proposed to me and
8 then, of course, I forwarded it to the
9 CEO of our company in Italy.

10 And depending on what they were
11 saying, I was basically giving the
12 information to the doctors, the doctor.

13 Q. You mentioned the CEO in Italy;
14 who was the CEO at that time in 2011?

15 A. Marco Baritza.

16 Q. And in 2011, did you have a U.S.
17 store? Did Pal Zireli have a U.S.
18 store?

19 A. 2011, we had -- we had -- yeah.
20 We had a temporary store, if I recall,
21 correct at the Palatso (phonetic) prior
22 to the opening at Cesar's Palace with
23 Dr. Bachar.

24 Q. That store closed prior to the
25 Las Vegas store opening in the Forum

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1 DIRECT EXAMINATION OF MR. SPANO
2 malls, right?

3 A. I believe so.

4 Q. Did you have another store in
5 the United States besides the Las Vegas
6 store?

7 A. Prior to that, we had a store
8 that we given basically the right to
9 use the name. It was one of our
10 customers at the multi-brand stores
11 that was interested in opening a store,
12 and he did at the Venetian, and he
13 basically we gave him the right to use
14 our name to sell our product and it was
15 a mono brand store, Pal Zileri store.

16 Q. But again, that store was closed
17 by the time the doctors opened their
18 store in Cesar's Palace, correct?

19 A. Correct.

20 Q. So I guess what I was trying to
21 ask you -- was there another store in
22 the United States at the time the
23 doctors opened in 2011?

24 A. No. Not that I'm aware.

25 Q. Did you work closely with the

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1 DIRECT EXAMINATION OF MR. SPANO
2 doctors in -- when they opened the
3 store, what kind of services did you
4 provide for the doctors as they opened
5 the stores?

6 MR. BROWN: Objection to the
7 form.

8 THE ARBITRATOR: What's the
9 objection?

10 MR. BROWN: The form multi
11 -- I'm not sure. There are two
12 different questions there.

13 THE ARBITRATOR: Mr. Brown,
14 as indicated before, we're in
15 arbitration. I'm not a jury. So
16 I can handle it. All right?
17 Even three in one. So it's okay.
18 Let's go ahead. Overruled.

19 Mr. Lewis, go ahead.

20 Q. The better question is whether
21 the witness can handle it, so let me
22 ask it again.

23 Did you work closely with the
24 doctors as they developed their plan to
25 open a store?

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1 DIRECT EXAMINATION OF MR. SPANO
2 A. I worked closely with the Dr.
3 Bachar, yes.

4 Q. And what types of services did
5 you provide for him?

6 A. Well, basically, I helped him
7 out with the buying, I helped him out
8 with the training of the staff, and I
9 followed the stores from -- from the
10 beginning.

11 I was in Vegas once a month to
12 make sure that the store looked the
13 right way because we also had rules and
14 regulations. The store had to look
15 certain ways. So we had to make sure
16 that it was that way. And I helped him
17 with the buying, yes.

18 Q. When you say you helped him with
19 the buying, can you be more specific?

20 A. Well, you know, twice a year,
21 you know, we all went to Italy, the
22 manager of the store, which was
23 responsible for the buying, Dr. Bachar,
24 and myself, and with them we did the
25 selection of the buying.

33 (Pages 126 to 129)

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1 DIRECT EXAMINATION OF MR. SPANO

2 I've been doing this for almost
3 30 years, so I have big knowledge about
4 the U.S. market and they asked me --
5 Dr. Bachar asked me to help them out
6 and so I did.

7 Q. Are you familiar with the
8 license agreement between Forall and
9 Sarah?

10 A. Well, a little bit. I am, yes.
11 Now, I cannot go back so many years, of
12 course, as I was a middle man, so I
13 went through it, and I was the one that
14 helped put it together.

15 Q. I'm going to show you a document
16 if my computer will cooperate. Bear
17 with me just a moment.

18 A. No problem.

19 Q. Mr. Spano, are you able to see a
20 document on my screen that reads
21 "License and Retail Operator
22 Agreement"?

23 A. Yes.

24 Q. Are you familiar with this
25 document?

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1 DIRECT EXAMINATION OF MR. SPANO

2 A. I'm just seeing the first page.

3 Q. Okay. Do you recall if you've
4 seen this document before?

5 A. You can continue to scroll if
6 you want.

7 Q. But let me save you some time.
8 I'm going to take you to a particular
9 provision in that document, that is
10 Section 4.2. Mr. Spano, can you see
11 where my cursor is?

12 A. Yes.

13 Q. Someone is unmuted.

14 May I ask you to take a look at
15 this provision and let me know when you
16 finish reading it?

17 A. 4.2?

18 Q. Yes, please.

19 A. Yes.

20 Q. Okay. Do you understand that
21 pursuant to this contract, Sarah was
22 required to purchase \$900,000 worth of
23 merchandise per year from Forall; do
24 you understand that?

25 A. Yes, I do.

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1 DIRECT EXAMINATION OF MR. SPANO

2 Q. Were you aware of that back when
3 you were working with the doctors and
4 they opened the store?

5 A. Yes, I was.

6 Q. Did Sarah purchase \$900,000
7 worth of inventory from Forall each
8 time the store was open?

9 MR. BROWN: Objection.

10 THE ARBITRATOR: What's the
11 objection?

12 MR. BROWN: Foundation. He
13 was not around for the duration
14 of the party's relationship.

15 THE ARBITRATOR: Overruled.

16 You can answer to the extent you
17 know. Did -- the question is:

18 Did Sarah purchase \$900,000 a
19 year of inventory from Forall?

20 THE WITNESS: When I was
21 there, no.

22 Q. And you -- how do you know that?

23 A. Well, because again, every
24 season we went down to Italy together
25 and we did budgets, and we went

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1 DIRECT EXAMINATION OF MR. SPANO

2 according to what the store sold, and
3 what the amount would have been to
4 place for the following season.

5 Q. Let me ask you about that. You
6 said that when you would go down and do
7 the purchasing that that would be based
8 on how the store had performed the
9 prior season; is that correct? Did I
10 hear you correctly?

11 A. That's correct.

12 Q. Now, that's inconsistent with
13 what's in the contract, right?

14 MR. BROWN: Objection.
15 Calls for a legal conclusion.

16 THE ARBITRATOR: Well, guys
17 it really doesn't matter. I
18 mean, I read 4.2 and he just said
19 they didn't do it, so of course
20 it's inconsistent. Next
21 question. Go ahead.

22 MR. BROWN: Can I just --
23 administratively, I need to ask a
24 question.

25 Rodney, this version of the

34 (Pages 130 to 133)

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1 DIRECT EXAMINATION OF MR. SPANO
 2 agreement is not the same as mine
 3 that I'm looking at. What --
 4 because this is on Page 5. My
 5 4.2 is on Page 6, and this is the
 6 first time I see the discrepancy
 7 in the license agreement. What
 8 -- are you marking this as
 9 exhibit? What was in your
 10 exhibits? What number?
 11 MR. LEWIS: This is 319 in
 12 the joint exhibits.
 13 MR. BROWN: Bear with me.
 14 MR. LEWIS: You can see our
 15 Bates number at the bottom, so
 16 you certainly had this version.
 17 Mr. Farber, another
 18 administrative question is
 19 whether you want us to move the
 20 documents into evidence now or --
 21 THE ARBITRATOR: No.
 22 Absolutely not. I said before
 23 when we were doing documents, all
 24 the documents are in evidence
 25 except those that I have kept out

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1 DIRECT EXAMINATION OF MR. SPANO
 2 of the claimants and all the ones
 3 that respondent gave me as joint
 4 in exhibits are also in evidence.
 5 In fact, at any point either
 6 counsel can simply say, "Mr.
 7 Farber I refer you to this
 8 exhibit," and read it to me, or
 9 just ask me to read it. You
 10 don't have to waste time with the
 11 witness going through it.
 12 MR. LEWIS: Fair enough.
 13 Respondents R Book are in until
 14 we have our discussion after
 15 lunch?
 16 THE ARBITRATOR: Okay.
 17 MR. BROWN: I just -- you
 18 know, look, I don't know what the
 19 issue is in terms of the
 20 formatting, and maybe it just got
 21 pushed on to another page in a
 22 different but this document is
 23 not a counter signed document.
 24 The counter signed document you
 25 have attached at 321.

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1 DIRECT EXAMINATION OF MR. SPANO
 2 THE ARBITRATOR: Let me ask
 3 you this: Mr. Brown, is 4.2
 4 different in the versions?
 5 MR. BROWN: That's what I'm
 6 trying to check, Mr. Farber, and
 7 it does not appear to be. It
 8 appears to be the same 4.2.
 9 THE ARBITRATOR: Okay. Then
 10 let's deal with -- you can sort
 11 out the issue of the different
 12 versions later, but for purposes
 13 of this examination let's
 14 proceed.
 15 Go ahead, Counselor. Mr.
 16 Lewis, go ahead.
 17 Q. Mr. Spano you had said that at
 18 the time you were working with the
 19 doctors at the opening of the store,
 20 you were aware that --
 21 THE ARBITRATOR: Hang on.
 22 Are you finished with reference
 23 to the document, Mr. Lewis?
 24 MR. LEWIS: No. I was just
 25 going to reiterate because I'm

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1 DIRECT EXAMINATION OF MR. SPANO
 2 not sure Mr. Spano was still
 3 there given the fact that we got
 4 side tracked on the
 5 administrative question.
 6 THE ARBITRATOR: Go ahead.
 7 Q. You understood that this
 8 provision was in the contract, the
 9 \$900,000 minimal purchase agreement,
 10 when you were working with the Hamads
 11 at the beginning of the store opening?
 12 A. I'm sorry. I did not hear you
 13 correctly.
 14 THE ARBITRATOR: He wants to
 15 know if you were aware of 4.2
 16 when the store opened?
 17 THE WITNESS: Yes. Of
 18 course I was. Did you hear my
 19 answer?
 20 THE ARBITRATOR: Yes, we
 21 heard it.
 22 Q. So, as far as you're aware, did
 23 Forall at any time enforce Section 4.2,
 24 the \$900,000 minimum purchase
 25 agreement, while you were still working

35 (Pages 134 to 137)

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1 DIRECT EXAMINATION OF MR. SPANO
2 with Forall?

3 A. No, we did not.

4 Q. Can you explain to us why? What
5 was the arrangement you had reached
6 about the minimum purchase agreement?

7 A. Well, like a -- in any other
8 type of business that we do, I mean,
9 now we're in the states, we go

10 according to the sales of the store.

11 The CEO at the time, Marco Baritza, did
12 not want to push too much on the
13 doctors, because he was understanding
14 that the sales were not what we
15 initially expected.

16 Q. And so did that -- did that in
17 fact lead to the policy that you all
18 had decided to operate under going
19 forward? Did the sales affect that
20 decision?

21 A. No.

22 MR. BROWN: Objection.

23 Leading the witness.

24 THE ARBITRATOR: Well, I
25 heard the answer. It's no. Go

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1 DIRECT EXAMINATION OF MR. SPANO
2 ahead. It did not lead to a
3 policy. Go ahead.

4 THE WITNESS: No, it did
5 not.

6 Q. Do you understand the question?

7 A. I do.

8 Q. I'm sorry. Why did you all
9 decide to not enforce the \$900,000
10 purchase agreement?

11 A. Because the idea was for all of
12 us to be successful, the doctors, the
13 store, I mean, the -- the company. You
14 know, and for us to force something
15 like that, would have been -- would
16 have not been good.

17 Q. So you didn't think it would be
18 proper to enforce the \$900,000 purchase
19 agreement under those circumstances?

20 A. It was not my decision. The
21 decision was taken by the CEO, because
22 he was present at all the meetings
23 prior where we discussed the budget.
24 And the doctor asked that we could not
25 place such an order, we had the numbers

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1 DIRECT EXAMINATION OF MR. SPANO
2 from the prior season, and we went
3 according to that.

4 Q. So let me understand, the
5 doctors asked directly to the CEO to
6 not be forced to purchase the \$900,000
7 minimum because of the low sales?

8 A. The sales were not low. The
9 sales did not achieve the goal of our
10 budgets. We had budgets we had to
11 arrive to, and we didn't. So it was
12 lenient of letting us not buy as much
13 as he was supposed to, but the amount
14 was -- was -- what was written in the
15 agreement. So --

16 Q. But, again, the CEO at the
17 highest level made the decision not to
18 enforce the minimum purchase agreement
19 while you were involved with the store?

20 A. Correct.

21 Q. I don't want to spend a lot of
22 time on this. We've touched upon it
23 briefly, and I know Mr. Farber is not
24 looking for a lot of testimony on this,
25 but please share with us what you

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1 DIRECT EXAMINATION OF MR. SPANO
2 believe when you were on the ground,
3 what were the factors and the
4 challenges that the store was facing in
5 Las Vegas when the doctors were
6 operating it?

7 A. Well, that shopping center in
8 the Forum shops at the time was one of
9 the best shopping malls to be in, as
10 per square footage, it was probably
11 number one in the U.S. So we thought
12 that we had a good chance, you know, to
13 have a -- a good store that would
14 produce good amount of money and would
15 give us a nice image.

16 However, things in Las Vegas
17 back then changed quite a bit. You
18 know, the mall started to go down a
19 little bit. The amount of retails in
20 the Las Vegas area went up
21 significantly, and the type of
22 customers that started coming in into
23 the Forum shops started to becoming
24 lower level, so that had a big impact
25 on the sales few seasons after we

36 (Pages 138 to 141)

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1 DIRECT EXAMINATION OF MR. SPANO
2 opened the store.

3 Q. So the respondents -- part of
4 their arguments are that the doctor's
5 inexperience caused the store to fail;
6 would you agree with that or disagree
7 with that?

8 A. Well, definitely the doctor -- I
9 say "the doctor," because I -- you
10 know, the second -- second doctor came
11 in afterwards, definitely did not have
12 any experience in retail or wholesale.

13 Q. Right. But would you say that
14 that was the contributing factor to the
15 store -- let me ask you this: What was
16 your role and was it meant to make up
17 for some of that inexperience?

18 A. Well, my role, first of all,
19 was, again, to be a middle man. On the
20 other end, I did more than I was
21 supposed to, because it was not my
22 responsibility to run the store, but
23 when Dr. Bachar asked me to help him
24 out, I did.

25 Again, I was in Vegas once a

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1 DIRECT EXAMINATION OF MR. SPANO
2 month, sometimes twice a month. I ran
3 all the trainings for the employees,
4 which was not my job, but it was in my
5 interest to make sure the store was
6 successful.

7 Again, I take my job really
8 seriously, and when I do something, I
9 try to do it 100 percent, so.

10 Q. You were listing some of the
11 challenges that the store faced,
12 including the -- did they have a change
13 in management of the Forum malls after
14 the store opened?

15 A. I believe that the store was
16 taken over by Simon maybe a year
17 before, I'm not sure exactly, but it
18 was definitely -- Simon took over the
19 shopping center, and that's when the
20 changes start to happen.

21 Q. Did it have a positive or
22 negative effect when Simon took over?

23 A. This is my personal opinion,
24 probably negative.

25 Q. I don't want you to draw a

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1 DIRECT EXAMINATION OF MR. SPANO
2 conclusion, but your testimony is that
3 there were a number of factors that
4 were challenging the store's sales; is
5 that safe to say, is that a fair
6 summary of your testimony?

7 A. Well, our business has been
8 having many challenges for the past
9 15 years, but definitely, yes. There
10 were many, many, many, factors.

11 Q. Bear with me just a moment, Mr.
12 Spano.

13 A. Yes.

14 Q. Was there a time when Sarah
15 asked for Forall's assistance due to
16 the store's performance?

17 A. Sarah, yes. There were many
18 times they asked for -- yes.

19 Q. Were they transparent about the
20 challenges that they were facing with
21 sales in Las Vegas?

22 A. Well, yes, we all had the
23 numbers, so Italy was well aware of the
24 challenges that the store was having.

25 Q. And as you recall, did Forall

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1 DIRECT EXAMINATION OF MR. SPANO
2 make efforts to try to help while were
3 you -- you were involved?

4 A. Absolutely.

5 Q. And that included some
6 discounts?

7 A. Discounts, I don't recall what
8 discounts we give them, but we
9 definitely gave some discounts in some
10 particular occasions.

11 Q. Do you remember it came a time
12 when Forall decided to help find a new
13 operator?

14 A. Forall did not look -- they
15 started looking when the doctor asked.

16 Q. That's part of the assistance
17 that the doctors asked for?

18 A. I'm sorry.

19 Q. That's part of the assistance
20 the doctors asked for?

21 A. Right, yes.

22 Q. Forall would help find a new
23 operator?

24 A. Correct.

25 Q. And do you do so?

37 (Pages 142 to 145)

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1 DIRECT EXAMINATION OF MR. SPANO

2 A. Well, it wasn't me personally,
3 but my colleague in Italy, they were
4 dealing with somebody that was
5 interested and he found somebody, yes.

6 Q. And was that Alfonso Entebi?

7 A. Yes.

8 Q. And the name of his company was
9 Italnord?

10 A. Italnord out of Mexico, yes.

11 Q. Are you familiar with other
12 stores that Mr. Entebi owns?

13 A. Mr. Mr. Entebi -- when the deal
14 was introduced to me that he might be
15 interested in taking over the Sarah
16 store Las Vegas, I knew that he had
17 other businesses in Mexico, including a
18 Pal Zileri, but other than that, no. I
19 was not aware of 100 percent what was
20 --

21 Q. Sure. Are you familiar with or
22 were you aware of the performance of
23 Mr. Entebi's other stores?

24 A. Well, what I heard from my
25 colleagues was he was successful

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1 DIRECT EXAMINATION OF MR. SPANO

2 businessman. He was doing business
3 with Pal Zireli for many years, so he
4 was successful, but he also did private
5 label besides Pal Zireli.

6 Q. Your understanding was he was
7 successful in operating Pal Zileri
8 stores?

9 A. Also, yes.

10 Q. Do you recall when Mr. Entebi
11 took over the store, the Las Vegas
12 store?

13 A. 2012, 2013 maybe. If I recall
14 correctly.

15 Q. Late 2013, but I know it was a
16 long time ago.

17 A. Yes. Okay.

18 Q. And do you recall whether Sarah
19 was required to stay on the lease while
20 Mr. Entebi was running the store?

21 A. If I recall correctly, yes. I
22 think they were required to stay on the
23 lease.

24 Q. And I don't want you to
25 speculate, if you don't recall, that's

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1 DIRECT EXAMINATION OF MR. SPANO

2 fine.

3 A. I'm sure. Yes.

4 MR. BROWN: I didn't
5 understand his answer there. Can
6 that be read back?

7 THE ARBITRATOR: Yes. Of
8 course. Maggie.

9 (Whereupon, a portion of the
10 record was read back.)

11 MR. BROWN: Thank you.

12 Q. Mr. Spano, do you recall whether
13 Simon required Sarah to stay on the
14 lease while Mr. Entebi was running the
15 store?

16 A. No. I think Mr. Entebi didn't
17 want to take over the lease.

18 MR. LEWIS: Sorry, Mr.

19 Farber. It's a new world we're
20 living in.

21 Q. Mr. Spano, can you see this
22 document that's on the screen?

23 A. Yes.

24 Q. You see that this is an e-mail
25 August 22, 2013; do you see that?

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1 DIRECT EXAMINATION OF MR. SPANO

2 A. Yes.

3 Q. Do you recall this document?

4 A. I wrote it, but I don't recall
5 it. But let me read it.

6 Q. Please do. And let me know when
7 you're finished.

8 A. Can you move it to my left
9 because I can only see it partial.

10 THE ARBITRATOR: Counsel, am

11 I correct that is Exhibit 53?

12 MR. LEWIS: Correct.

13 Q. Mr. Spano, are you saying you
14 can't see the full screen?

15 A. Correct. Because I see your
16 faces on the right side. Let me see if
17 I can move it. Yes, I can. Perfect.
18 I got it.

19 Q. It's just the first paragraph
20 I'm going to ask you about.

21 Does this refresh your
22 recollection as to why Mr. Entebi was
23 unable to come onto the lease himself?

24 A. Yes.

25 Q. And this is because that his

38 (Pages 146 to 149)

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1 DIRECT EXAMINATION OF MR. SPANO
2 credit wasn't sufficient for Simon to
3 accept him on a lease, right?

4 A. Yes. Did you hear me?

5 Q. Yes. And I'm going to ask you
6 the last question about the document.

7 In the first sentence you can
8 see it was Alfonso Entebi asking to
9 have the lease transferred to him,
10 correct?

11 MR. BROWN: Objection.

12 THE ARBITRATOR: What's the
13 objection.

14 MR. BROWN: That's leading.

15 That's not -- I think it's just a
16 leading question. This isn't
17 from Mr. Entebi.

18 THE ARBITRATOR: It doesn't
19 matter. This is a letter from
20 the witness, and he says -- it's
21 kind of like quadruple hearsay.
22 "I spoke to Dr. Hamad and he's
23 telling me that now, you, "you,"
24 being Mr. Alfonso, are asking to
25 have in writing that the mall

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1 DIRECT EXAMINATION OF MR. SPANO
2 will transfer the lease to you?"

3 Mr. Lewis, you're asking the
4 witness --

5 I mean, you wrote this Mr.
6 Spano?

7 THE WITNESS: Yes, I did.

8 THE ARBITRATOR: I read it.

9 Why don't we move on? Next
10 question. Sustained. It's kind
11 of like quadruple hearsay, so
12 it's not worth too much.

13 Q. Did Forall approve of Italnord
14 taking over the store?

15 A. Yes, they did.

16 Q. Did there come a time when
17 Italnord no longer wanted to operate
18 the store?

19 A. Yes.

20 Q. And do you recall whether that
21 was because of the sales performance or
22 lack there of?

23 A. The reason was because it did
24 not achieve the goal that it wanted to
25 achieve.

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1 DIRECT EXAMINATION OF MR. SPANO

2 THE ARBITRATOR: Mr. Spano,
3 when the deal was made, as far as
4 you know, with Mr. Entebi, Mr.
5 Entebi, I take it, was aware of
6 the minimal sales requirement
7 that was in the license
8 agreement; is that right?

9 THE WITNESS: I believe
10 there was a different agreement
11 that he had to go by, not the
12 original agreement, if I recall
13 correctly.

14 THE ARBITRATOR: A separate
15 agreement, and as far as you
16 know, that separate agreement
17 changed the requirements of the
18 \$900,000; is that what you're
19 saying?

20 THE WITNESS: Yes, I believe
21 so.

22 THE ARBITRATOR: And that
23 was a written agreement you're
24 talking about with Mr. Entebi?

25 THE WITNESS: Yes. Between

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1 DIRECT EXAMINATION OF MR. SPANO
2 Forall and Mr. Entebi.

3 THE ARBITRATOR: Go ahead,
4 Counselor.

5 Q. Mr. Spano, what conclusions that
6 you draw from the fact that Italnord,
7 an experienced and successful operator
8 of Pal Zileri stores, could not
9 successfully operate the Pal Zileri
10 store in the Forum malls?

11 A. That's a tough question because,
12 you know, it was not fully committed to
13 this market. For him it was a test for
14 him to see if a store would perform the
15 way he wanted to. Definitely it did
16 not do well, and that was the reason he
17 wanted to get out of the deal, and he
18 did.

19 Q. In your opinion, Mr. Spano, what
20 should have happened after Italnord
21 refused to continue operating the
22 store?

23 MR. BROWN: Objection.

24 Calls for speculation.

25 THE ARBITRATOR: "What

39 (Pages 150 to 153)

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1 DIRECT EXAMINATION OF MR. SPANO
 2 should have happened," I think I
 3 think I have to sustain that one
 4 because I'm not sure what you
 5 mean. A lot more people would
 6 come to Las Vegas, a lot more
 7 people would go shopping, it
 8 could be a lot of things. You
 9 know, I'm just kind of --
 10 MR. LEWIS: Let me ask more
 11 specifically, Mr. Farber.
 12 THE ARBITRATOR: Why don't
 13 you rephrase, Mr. Lewis. Go
 14 ahead sustained.
 15 Q. After Italnord refused to
 16 continue on managing the store, Mr.
 17 Spano, what do you think the parties
 18 should have done? What decisions
 19 should they have made about the store?
 20 MR. BROWN: Objection again.
 21 THE ARBITRATOR: Sustained.
 22 I just don't know what you're
 23 getting at, Mr. Lewis.
 24 MR. LEWIS: If you all would
 25 let Mr. Spano answer --

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1 DIRECT EXAMINATION OF MR. SPANO
 2 THE ARBITRATOR: You've got
 3 to rephrase. Go ahead.
 4 Q. Did Forall change CEOs at some
 5 point while the Vegas store was open
 6 while you were with Forall?
 7 A. Yes.
 8 Q. And who came on as CEO?
 9 A. You're talking about the company
 10 CEO, Forall Star or Forall USA?
 11 Q. Forall USA?
 12 A. Forall USA came out with Paolo
 13 Torello-Viera.
 14 Q. Did you have any opinion about
 15 that hire -- withdrawn.
 16 Did anything change in how
 17 Forall dealt with Sarah after Mr.
 18 Torello became CEO?
 19 A. Well, I left a few months after
 20 the new CEO came to the United States.
 21 Whatever happened afterwards, I cannot
 22 tell you because I was not part of
 23 Forall no longer.
 24 Q. Are you aware that Forall USA
 25 took over and began operating the store

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1 DIRECT EXAMINATION OF MR. SPANO
 2 in 2015?
 3 A. I heard, yes.
 4 Q. This happened after you had left
 5 Forall?
 6 A. Yes.
 7 Q. Were you surprised to learn that
 8 Sarah and Forall were engaged in
 9 litigation?
 10 A. Yes and no. Yes and no.
 11 Q. Can you explain that?
 12 A. Well, I was surprised because,
 13 again, if it was my decision, which
 14 wasn't, you know, I knew the situation
 15 with the store, and if they would have
 16 found somebody that took over the --
 17 the lease, my opinions I would have
 18 given to the CEO would have been to let
 19 her do it, but when these new people,
 20 again, it changed. So I knew that they
 21 were not going to let it go. That's
 22 basically it.
 23 Q. Just to make sure we're
 24 understanding your testimony. You're
 25 saying that if the former regime was in

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1 DIRECT EXAMINATION OF MR. SPANO
 2 place, Marco as CEO, you would have
 3 suggested that the parties find a
 4 lease, someone to take over the lease
 5 and go their separate ways; is that
 6 your testimony?
 7 A. Correct.
 8 MR. BROWN: Note my
 9 objection the relevancy of this
 10 is nil. This is --
 11 THE ARBITRATOR: I heard the
 12 answer already. That's correct.
 13 So Mr. Spano, you've got to pause
 14 at the end of each question.
 15 Mr. Lewis, next question.
 16 MR. LEWIS: No further
 17 questions, Mr. Farber.
 18 THE ARBITRATOR. Mr. Spano,
 19 we're going to do what's called
 20 "cross examination." Mr. Spano,
 21 look, Mr. Brown is in charge. He
 22 is the boss of the cross. All
 23 right? So I don't want you
 24 fighting with him. I just want
 25 you to listen to his question.

40 (Pages 154 to 157)

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1 DIRECT EXAMINATION OF MR. SPANO

2 THE WITNESS: Absolutely.

3 THE ARBITRATOR: And respond

4 as directly and as succinctly as

5 you can. If you can answer,

6 "yes," "no," "I don't remember,"

7 "I don't know," that's fine. All

8 right. Same rules in reverse.

9 If Mr. Lewis says the word

10 "objection" don't answer until I

11 tell you whether or not you

12 should do so.

13 THE WITNESS: Okay.

14 THE ARBITRATOR: All right.

15 Mr. Brown, go ahead.

16 MR. BROWN: Thank you, Mr.
17 Farber.

18
19
20 * * *

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1 CROSS EXAMINATION OF MR. SPANO

2 my son was born, so in June.

3 Q. So you stayed on six months
4 after your resignation letter?

5 A. I believe so. I don't remember
6 if it was six months or three months,
7 but I stayed longer than I was supposed
8 to.

9 Q. And how -- how long had you
10 worked for Forall?

11 A. I -- I worked like -- I been
12 representing Pal Zileri for 20 --
13 21 years. I worked 10 years with
14 Forall USA as Director of Sales. Prior
15 to that, I worked for the agency that
16 represented Pal Zileri. Italcoast
17 (phonetic), if I remember correctly,
18 and then I went -- the old agent
19 retired and the company offered me the
20 position to run the U.S. market.

21 Q. Okay. And did there come a time
22 where you were approached by the
23 claimants, the doctors, with a business
24 proposal to open a store in Las Vegas?

25 A. Yes.

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1 CROSS EXAMINATION OF MR. SPANO

2 CROSS-EXAMINATION

3 BY MR. BROWN

4 Q. Hello, Luca.

5 A. Hello, Mr. Brown. How are you?

6 Q. Good. We talked in the past,
7 have we not?

8 A. Of course.

9 Q. When did you leave Forall USA?

10 A. I left in 2015.

11 Q. Was it -- is it more accurate to
12 state that your resignation came in
13 December of '14?

14 A. Let's see. December probably
15 and then I left afterwards -- I stayed
16 a little longer to help them out with
17 the transition, because we were in the
18 full selling season, so I didn't want
19 to leave them in the middle of selling
20 season.

21 Q. So when was your last date of
22 employment with Forall?

23 A. It was in June, I believe. If I
24 remember correctly, because my son was
25 born in July, so about a month before

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1 CROSS EXAMINATION OF MR. SPANO

2 Q. Do you recall that?

3 A. Absolutely.

4 Q. And do you recall at that time
5 who approached you with that plan?

6 A. As I stated before, it was a
7 friend of the doctors that was a
8 customer of ours in the prior store we
9 had, and eventually Dr. Bachar
10 contacted me and asked me to meet with
11 him.

12 Q. And where did that meeting
13 occur?

14 A. It was in Las Vegas. If I
15 remember correctly, Las Vegas.

16 Q. And what was their pitch or
17 proposal to Forall at that time?

18 A. Well, they wanted to -- you
19 know, they wanted to open -- let me
20 also say something that is gentleman
21 that was a friend of their's --

22 THE ARBITRATOR: Hang on.

23 Let's stick with the question.

24 Just tell me what they said.

25 A. They -- they told me that

41 (Pages 158 to 161)

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1 CROSS EXAMINATION OF MR. SPANO
2 they're interested in opening a Pal
3 Zileri store in Las Vegas.

4 Q. And who was there at that
5 meeting?

6 A. Dr. Bachar and another
7 gentleman, which I don't recall his
8 name, which is the person that told Dr.
9 Bachar a possibility of being a Pal
10 Zileri store in Las Vegas.

11 Q. Okay. I'm going to show you
12 what's been marked as Forall Bates
13 labeled Forall 834 to 848, and this was
14 produced only yesterday, so I'm not
15 sure if it's actually made its way into
16 Mr. Farber's binder or not due to --
17 this was the only document of its kind,
18 though. It was produced to me late
19 yesterday afternoon by Ms. Settimi.
20 She located in her prep for this.

21 MR. LEWIS: Mr. Farber, I
22 object to this based on the
23 representation that this was
24 something that was produced
25 yesterday.

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1 CROSS EXAMINATION OF MR. SPANO

2 MR. BROWN: Exactly. It was
3 produced, but I'm going to
4 establish a foundation, and it's
5 an e-mail on this witness that
6 I'd like to cross him on.

7 THE ARBITRATOR: Mr. Lewis,
8 do you have an objection or not?

9 MR. LEWIS: Is this being
10 used for rebuttal?

11 THE ARBITRATOR: He said he
12 wants to use it for cross.

13 MR. LEWIS: I'm going to
14 say, just for the record, Mr.
15 Farber, that there are several
16 exhibits that Mr. Brown produced
17 yesterday or over the weekend
18 that I hope we're going to have
19 an opportunity to talk about
20 after lunch before it is shown to
21 witnesses.

22 THE ARBITRATOR: Just tell
23 me "yes" or "no", do you object
24 to this one?

25 MR. LEWIS: I don't know

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1 CROSS EXAMINATION OF MR. SPANO
2 yet.

3 MR. BROWN: I'm going to put
4 it up. This was the business
5 plan e-mail, Rodney, that I sent
6 over.

7 THE ARBITRATOR: Is this
8 correct that that was produced
9 yesterday, Mr. Brown?

10 MR. BROWN: Yes, it is, Mr.
11 Farber. It was located by Ms.
12 Settimi and it's an e-mail from
13 Luca to Ms. Settimi dated Monday,
14 May 20, 2010.

15 MR. LEWIS: This is highly
16 objectionable.

17 THE ARBITRATOR: Hang on.
18 Why was it not produced
19 previously?

20 MR. BROWN: It wasn't
21 necessarily responsive to any of
22 the requests by claimants, and
23 more so the fact that Mr. Spano
24 was produced by a witness for
25 them was not anticipated to be

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1 CROSS EXAMINATION OF MR. SPANO
2 perfectly honest with you. Ms.
3 Settimi went back in her e-mails
4 and located it. This was not
5 previously located, but this is
6 the business plan by the
7 claimants sent to Forall back in
8 2010. It's highly relevant.

9 THE ARBITRATOR: I heard
10 enough argument.

11 MR. BROWN: It should have
12 been produced by them, Your
13 Honor, if anything.

14 THE ARBITRATOR: Well, I
15 don't know guys. Right now, I am
16 told this was only produced
17 yesterday, and I've not been
18 given a reason as to why it
19 wasn't produced previously.

20 At this point, the objection
21 is sustained. And I am not going
22 to take the document because it
23 wasn't produced during the course
24 of discovery. If you want to go
25 back at some point and show me

42 (Pages 162 to 165)

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1 CROSS EXAMINATION OF MR. SPANO
2 that it was not the subject of a
3 request, Mr. Brown, you can do
4 so.

5 But at this stage, it was
6 not on a witness list, which was
7 due a long time ago. It was not
8 produced previously. Life is a
9 two-way street. Objection is
10 sustained. Next question, and
11 you can take it off the screen.

12 MR. BROWN: Let me stop my
13 share.

14 Q. Mr. Spano, do you recall one of
15 the initial investors with Mr. Bachar
16 was a gentleman that actually worked at
17 the Pal Zileri in Las Vegas prior to
18 that date?

19 A. No, I don't recall that.

20 Q. Who were -- who were the -- do
21 you recall Mr. Bachar referring to
22 himself as investor, an investor group
23 at that time?

24 A. An investor, yes.

25 Q. And who was part of his

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1 CROSS EXAMINATION OF MR. SPANO
2 investment group or investor group?

3 A. Hamad, I believe.

4 Q. Anybody else?

5 A. Not that I recall.

6 Q. What about the friend that
7 referred you, was he part of that
8 investor group?

9 A. No. I don't think so.

10 Q. Do you recall if the doctors put
11 together a business proposal plan that
12 they submitted to Forall?

13 A. Yes, they did.

14 Q. And was that submitted to you?

15 A. Yes, sir.

16 Q. And what was in that proposal
17 plan that you saw?

18 THE ARBITRATOR: Counsel,
19 there's been no objection, but
20 why are we getting to this.

21 MR. LEWIS: I was about to
22 object to the relevancy of this.

23 THE ARBITRATOR: Now we have
24 an objection.

25 Why do I need to go through

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1 CROSS EXAMINATION OF MR. SPANO
2 all this, Mr. Brown?

3 MR. BROWN: Because I think
4 this witness is -- has talked
5 about the beginning of the origin
6 of the party's relationship, and
7 I just wanted to establish the
8 nature that they were coming in
9 as investors in this store. And
10 they had a sophisticated group.
11 They put together a plan where
12 they had done market analysis on
13 Pal Zileri and that market, and I
14 thought that was relevant for
15 purposes of background.

16 THE ARBITRATOR: I think we
17 can move on, frankly, Mr. Brown.
18 I just don't see how this is
19 going to be determinative of what
20 I have to decide. They -- you
21 know.

22 The doctors could have
23 gotten whatever advice they want.
24 They could have been
25 sophisticated or less

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1 CROSS EXAMINATION OF MR. SPANO
2 sophisticated or not

3 sophisticated. The fact of the
4 matter is they signed certain
5 documents. They may have been
6 waived. That would be, you know,
7 relevant, but the original
8 business plan, I don't see how it
9 has much to do with what I have
10 to decide, so let's move on.

11 MR. BROWN: I'll move on.

12 Q. Luca, did you -- was Forall
13 party to the lease agreement between
14 Sarah and the Forall shops?

15 A. I don't believe so.

16 Q. It was not a signatory to that,
17 was it?

18 A. Correct.

19 Q. And were you part of the
20 negotiations on the collateral
21 assignment of lease between Sarah and
22 Forall wherein -- go ahead.

23 A. No, I was not.

24 Q. Who handled that for Forall?

25 A. Forall, Palma Settimi, and with

43 (Pages 166 to 169)

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1 CROSS EXAMINATION OF MR. SPANO
2 my counterpart in Italy.

3 Q. And who was the counterpart in
4 Italy.

5 A. Giuliano Casarotto, which is the
6 expert manager and Marco Bartiza, which
7 was the CEO.

8 Q. So other persons within Forall
9 handled those negotiations at the
10 outset of the license agreement with
11 Sarah and -- isn't that correct?

12 A. That's correct.

13 Q. And to your knowledge, did both
14 parties have counsel involved during
15 those negotiations?

16 A. Yes, they did.

17 Q. And did you have any part in
18 drafting of the license agreement
19 between Sarah and Forall?

20 A. No, I did not.

21 Q. Did you sign any agreements
22 binding Forall as it related to the
23 license agreement or management
24 agreements there -- with Sarah?

25 A. No, I did not have the authority

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1 CROSS EXAMINATION OF MR. SPANO
2 of any signature.

3 Q. Were you an officer of Forall
4 USA?

5 A. No, I was not.

6 Q. To your knowledge, who did sign
7 those agreements on behalf of Forall?

8 A. I'm sorry. I didn't hear you.

9 Q. To your knowledge, who did sign
10 the license agreements with -- on
11 behalf of Forall?

12 A. I believe Palma. She was in --
13 it was her job to do so. Palma Settimi
14 did.

15 Q. Okay. Did there come a time
16 where the claimants requested the
17 ability to sell Pal Zileri product on
18 the internet?

19 A. Yes.

20 Q. What do you recall of that?

21 A. They asked to -- to bill -- they
22 asked authorization to sell online.

23 Q. The "authorization," is that
24 what you said?

25 A. Yes.

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1 CROSS EXAMINATION OF MR. SPANO
2 Q. And is that because the ability
3 to sell Pal Zileri license product
4 online was not a right that they were
5 provided with in the license agreement?

6 A. That's correct.

7 Q. And did the claimants request
8 the ability to do that to help them in
9 sales in the United States?

10 MR. LEWIS: Objection.

11 THE ARBITRATOR: What's the
12 objection?

13 MR. LEWIS: This is an
14 objection to lines of questioning
15 that are beyond the scope of Mr.
16 Spano's direct.

17 THE ARBITRATOR: In
18 arbitration, that's certainly not
19 going to be the basis for an
20 objection. Overruled.

21 You can answer.

22 A. Repeat the question again.

23 THE ARBITRATOR: Mr. Brown,
24 I want you to restate it, it will
25 be faster.

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1 CROSS EXAMINATION OF MR. SPANO
2 Q. Did they ask for the ability to
3 sell Pal Zileri brands online to help
4 them with sales in the United States?

5 A. Yes.

6 Q. And wasn't this a valuable asset
7 that they were requesting of that
8 Forall ultimately provided them with?

9 A. I believe so.

10 Q. And did Forall require the
11 claimants to provide them anything in
12 exchange for that ability to sell
13 online?

14 A. I don't remember, but -- I don't
15 remember.

16 Q. Okay. Did you operate a show
17 room in Manhattan for Forall at this
18 time?

19 A. Yes, I did.

20 Q. And that's where customers would
21 come and make purchases for the various
22 seasons, the lines?

23 A. Correct.

24 Q. To your understanding of the
25 website agreement that was reached

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1 CROSS EXAMINATION OF MR. SPANO
 2 between Forall and Simon -- Forall and
 3 Sarah. I keep doing that. I
 4 apologize. Was -- whose obligation was
 5 it to create Sarah's website?
 6 A. Sarah.
 7 Q. Are you aware that Sarah has
 8 alleged in this arbitration that they
 9 -- that Forall was supposed to set up
 10 an e-commerce store for them and Forall
 11 failed to do that and as a result Sarah
 12 was damaged?
 13 A. I was not aware of that.
 14 Q. Is that an accurate allegation
 15 to your knowledge?
 16 A. I don't think so.
 17 Q. What was your understanding of
 18 the website and the parties respective
 19 obligations?
 20 A. That Sarah would build and
 21 operate the website at their own
 22 discretion under, of course, our
 23 guidance as regards to image. No other
 24 responsibility was on our end.
 25 Q. And in fact, do you recall that

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1 CROSS EXAMINATION OF MR. SPANO
 2 Sarah engaged an e-vendor to establish
 3 set up and launch a website for them?
 4 A. I think so, yes. I think so,
 5 yes.
 6 Q. Does the company Vegas Graphics
 7 ring any bells with you?
 8 A. I don't -- I don't remember.
 9 Q. I'm going to pull up an exhibit,
 10 but you're going to have to bear with
 11 me. I apologize. It will only take a
 12 second. I think I have it, but I would
 13 need cross reference to the exhibit
 14 list. Okay.
 15 MR. BROWN: I'm going to
 16 pull what's been the joint
 17 Exhibit 238 if anyone wants to
 18 look at it in hard copy. This is
 19 hard, actually. There's a lot of
 20 different toggles to go through.
 21 And I'm going to share this
 22 screen.
 23 Q. Can everyone see that?
 24 A. Yes.
 25 Q. And this is an e-mail chain and

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1 CROSS EXAMINATION OF MR. SPANO
 2 I scrolled to the bottom of it. And
 3 Mr. Spano, you can see your name there?
 4 A. Yes.
 5 Q. Is that your e-mail address?
 6 A. That's correct. It was.
 7 Q. And I'm going to go to the very
 8 bottom e-mail and let you read that and
 9 scroll up as you need me to. Okay?
 10 Who was Giuliano Casarotto?
 11 A. He was expert manager for Forall
 12 stock. He was my direct supervisor.
 13 Q. Let me know when you're done
 14 reading the e-mail.
 15 A. I'm done.
 16 Q. And in reply to that e-mail
 17 there was an e-mail dated December 14,
 18 2011, which you're copied on that I'll
 19 ask you to read back from Mr.
 20 Casarotto?
 21 A. Okay.
 22 Q. Do you recall this e-mail or
 23 this time period of events?
 24 A. Yes. Now I do.
 25 Q. And what were the claimants

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1 CROSS EXAMINATION OF MR. SPANO
 2 requesting and what at that time?
 3 A. They were requesting -- I think
 4 they were requesting -- I don't
 5 remember. I remember the e-mail and
 6 where Mr. Casarotto states whatever you
 7 read in the e-mail here, but I don't
 8 remember exactly what they were -- they
 9 were asking.
 10 Q. Okay. But is it -- do you
 11 recall Sarah asking for the ability to
 12 sell products online? I think you
 13 previously testified "yes".
 14 A. Yes.
 15 Q. And Forall got back to them and
 16 said, "Yes. You can tell it online
 17 even though the license agreement
 18 pertains only to sales in the store";
 19 is that right?
 20 MR. LEWIS: Objection.
 21 Q. And there was some conditions on
 22 that though; do you recall what the
 23 conditions were?
 24 A. No.
 25 Q. Do you recall that it was a

45 (Pages 174 to 177)

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1 CROSS EXAMINATION OF MR. SPANO
2 non-exclusive license for the USA?

3 A. Yes.

4 Q. And that's a pretty valuable
5 thing, right, to provide a business
6 partner or company with the ability to
7 sell online products to the United
8 States of America market; isn't that
9 true?

10 A. I believe so.

11 Q. And you've been in the retail
12 industry luxury brands for 30 something
13 years, right?

14 A. That's correct.

15 Q. And the United States is the
16 biggest retail market in the world?

17 A. Yes. Supposed to be, yes.

18 Q. Now, do you recall sending the
19 e-mail that I just scrolled up to here
20 or do you recall the e-mail?

21 A. I do recall, yes, sending
22 several e-mails.

23 Q. And do you recall, in fact, that
24 there came a time where the -- Sarah
25 launched a website prior to finalizing

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1 CROSS EXAMINATION OF MR. SPANO
2 the website agreement?

3 A. That I do not recall. I don't
4 remember, to tell you the truth.

5 Q. Okay. But was it your
6 understanding that Sarah was going --
7 Sarah was going to launch their own
8 E-commerce website?

9 A. Yes.

10 Q. And Forall did not commit to do
11 it for them?

12 A. That's correct.

13 Q. And that was never -- that was
14 never the agreement, right?

15 A. That's correct.

16 MR. BROWN: You know what,
17 I'm still sharing. That was a
18 mistake there, but I don't know
19 if I gave anything away.

20 This is another e-mail. I
21 believe it's Exhibit 597 in the
22 joint list. It's claimants 10815
23 through 10818. Okay. And I'm
24 going to scroll through it.
25 Okay.

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1 CROSS EXAMINATION OF MR. SPANO
2 Q. Do you see here that this begins
3 a chain from Steve at Vegas Graphics to
4 Ghanem; do you see that?

5 A. Yes.

6 Q. Who is Ghanem?

7 A. Ghanem worked for the doctors
8 for a period of time; he was doing
9 their marketing and their website.

10 Q. Okay. And you're looped in on
11 this e-mail a little higher up?

12 A. Yes.

13 Q. Who is Ms. Metageti (phonetic)?

14 A. Our PR person involved in public
15 relation for a group of Forall in
16 Italy.

17 Q. So she worked for Forall,
18 correct?

19 A. That's correct.

20 Q. And here's an e-mail February
21 2012 saying, "Elena, Luca, I have sent
22 you the first draft/layout of the
23 website homepage last week and I have
24 not received any feedback from you," he
25 talks about a tight schedule and design

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1 CROSS EXAMINATION OF MR. SPANO
2 process; do you see that?

3 A. Yes, I do.

4 Q. And does this refresh your
5 recollection as to who was -- that
6 Sarah was developing there website at
7 this time?

8 A. Yes.

9 Q. And do you recall Ms. Metageti
10 providing some feedback on that
11 website?

12 A. I believe, why he.

13 Q. Now I'm going to scroll up
14 higher, and this is an e-mail from
15 Ghanem saying, "We had to launch the
16 website earlier due to our agreement
17 with American Express," and it gives
18 the website link here and the date of
19 this is February 13, 2012; do you
20 recall this happening?

21 A. Yes.

22 Q. And was there issue that you had
23 with it at that time?

24 A. I believe the company did, not
25 me.

46 (Pages 178 to 181)

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1 CROSS EXAMINATION OF MR. SPANO
 2 Q. Okay. What was Forall's issue?
 3 What was the concern?
 4 A. Well, because it was launched
 5 prior to the approval.
 6 Q. So they launched the website,
 7 but was there a written agreement
 8 governing the terms what the license on
 9 the Pal Zileri product was yet?
 10 A. Not yet.
 11 Q. So did you, after this point in
 12 time, have to follow up with the
 13 doctors and insist upon a written
 14 agreement being put in place?
 15 A. I believe so.
 16 Q. In fact you had to badger them
 17 for that, didn't you?
 18 MR. LEWIS: Objection.
 19 THE ARBITRATOR: Did I hear
 20 an objection to at that?
 21 MR. LEWIS: (Inaudible.)
 22 THE ARBITRATOR: Mr. Lewis,
 23 you don't sound right on the
 24 audio. You sound like you have a
 25 hoarse throat. Try to repeat.

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1 CROSS EXAMINATION OF MR. SPANO
 2 MR. LEWIS: Is that better?
 3 THE ARBITRATOR: No.
 4 MR. LEWIS: Can you hear me?
 5 Can you understand what I'm
 6 saying?
 7 THE ARBITRATOR: Only
 8 vaguely.
 9 MR. BROWN: Rodney, you may
 10 want to do what we did. We
 11 called in with the phone, so the
 12 audio is through the phone.
 13 MR. LEWIS: (Inaudible.)
 14 MR. SHAH: Mr. Farber, just
 15 to clarify, Mr. Lewis just
 16 indicated he might leave the zoom
 17 and dial back in. Just to let you
 18 know, I think there is a problem
 19 sometimes with -- the audio gets
 20 messed up and he'll have to dial
 21 in via phone.
 22 THE ARBITRATOR: Mr. Shah
 23 are you together in the same
 24 place with Mr. Lewis?
 25 MR. SHAH: No.

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1 CROSS EXAMINATION OF MR. SPANO
 2 THE ARBITRATOR: Okay. Mr.
 3 Lewis, if you can hear me, what
 4 you last said was very difficult
 5 to understand. Why don't you try
 6 to dial back in? Why don't you
 7 shake your head. Do you
 8 understand what I just said?
 9 MR. BROWN: It's close to
 10 lunch. It may be more efficient
 11 to break.
 12 THE ARBITRATOR: Mr. Lewis,
 13 are you there?
 14 MR. LEWIS: Can you hear me
 15 now?
 16 THE ARBITRATOR: Much
 17 better. Go ahead. So let's go
 18 back so that we have it all.
 19 Mr. Brown, rephrase your
 20 last question, and if there's an
 21 objection we'll deal with it.
 22 MR. BROWN: Okay.
 23 Q. I was saying, in fact, Mr.
 24 Spano, didn't you have to follow up
 25 multiple times in order to have the

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1 CROSS EXAMINATION OF MR. SPANO
 2 doctors actually sign the license
 3 agreement pertaining to their ability
 4 to sell internet Pal Zileri product?
 5 MR. LEWIS: Objection to the
 6 form. I'm objecting to what's
 7 really become Mr. Brown
 8 testifying and saying "isn't that
 9 correct," at the end of his
 10 testimony. I know some leading
 11 I've done the same, but I believe
 12 we've gone past that. And
 13 separately, Mr. Farber, I believe
 14 this is becoming cumulative at
 15 this point.
 16 THE ARBITRATOR: I'm not
 17 sure, Mr. Brown, I just don't
 18 understand why we're doing this.
 19 I mean, Exhibit D to claimants
 20 brief, which I read last week, is
 21 the internet agreement. I see
 22 that it's signed by everyone, so
 23 why do I need to know if the
 24 doctors had to be pestered to do
 25 this, if they didn't have to be.

47 (Pages 182 to 185)

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1 CROSS EXAMINATION OF MR. SPANO
2 I don't know why we're going
3 through all this.

4 The internet agreement says
5 what it says. Mr. Lewis alleges
6 that under the internet agreement
7 your client was supposed to do
8 something, and that's what -- you
9 know, I don't see any relevance
10 to what we're doing other than
11 that. So what's the point?

12 MR. BROWN: Thank you. The
13 point is the claimants have
14 launched their website, which --
15 is the e-mail that I'm going
16 through disclosed that, prior to
17 that internet agreement even
18 being signed. That agreement was
19 signed by the claimants on
20 April 2, 2012, with a notary
21 stamp.

22 There's e-mails that I'm
23 putting before this witness from
24 February saying, "We had to
25 launch it early; Amex required

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1 CROSS EXAMINATION OF MR. SPANO
2 it." And then there's a series
3 of subsequent e-mails that I have
4 not gotten to yet, but Mr. Spano
5 had to follow up multiple times
6 with the claimant saying, "Hey,
7 we need this agreement in place.
8 You got ahead of us on this,"
9 etcetera, etcetera, but it puts a
10 lie to their statement that we
11 were obligated to launch a
12 website.

13 That's complete falsehood
14 and distortion of what was
15 understood of the parties at that
16 time that Sarah wanted to launch
17 their website, they did launch
18 their website, and then the
19 agreement, you know, is
20 cart-before-the-horse type of
21 thing, but it's demonstrating
22 that that was not the party's
23 intent nor what they have done at
24 the time.

25 THE ARBITRATOR: Mr. Lewis,

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1 CROSS EXAMINATION OF MR. SPANO
2 let me ask you a question: Is
3 there specific language in the
4 internet that sets forth an
5 agreement by Forall to help
6 launch a website or to lunch a
7 website in the United States as
8 you alleged in your brief?

9 MR. LEWIS: It's
10 interpretation. It's our
11 interpretation, and I don't have
12 that in front of me, Mr. Farber,
13 so I don't want to speak out of
14 turn. But I'm happy to take a
15 look at that and answer your
16 question.

17 THE ARBITRATOR: Well, I
18 assumed it was a -- an
19 interpretation because I didn't
20 see the language in there, so I
21 didn't understand it.

22 But Mr. Brown, I think you
23 did explain your position well,
24 and I understand now, and I think
25 I have to overrule the objection,

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1 CROSS EXAMINATION OF MR. SPANO
2 and give you leave to go into
3 that area. So you can go ahead
4 with your questions.

5 MR. BROWN: Thank you, Your
6 Honor, Mr. Farber.

7 I'm going to share another
8 exhibit then. This is really a
9 continuation of the e-mail chain
10 we were just looking at, and this
11 is Bates labeled it was produced
12 by claimants --

13 THE ARBITRATOR: Are all
14 these documents in evidence
15 already?

16 MR. BROWN: Yes.

17 THE ARBITRATOR: Let me just
18 take a shot at this.

19 Mr. Spano --

20 Could you take this off and
21 let me see Mr. Spano. All right?

22 MR. BROWN: Sure. Sorry.
23 I'm layers within the share. I
24 can't Zoom through my work --
25 there we go.

48 (Pages 186 to 189)

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1 CROSS EXAMINATION OF MR. SPANO

2 THE ARBITRATOR: Mr. Spano,
3 are you with me?

4 THE WITNESS: Yes.

5 THE ARBITRATOR: Mr. Spano,
6 did you have any understanding
7 that Forall had agreed to create
8 a website for -- for Sarah?

9 THE WITNESS: No. We did
10 not agree to create a website.

11 THE ARBITRATOR: Did anyone
12 ever tell you that it was the
13 duty of Forall to create a
14 website for Sarah?

15 THE WITNESS: No.

16 THE ARBITRATOR: Did there
17 come a time when Sarah was
18 promoting product on its own
19 website and there was not yet
20 permission from Forall to do
21 that?

22 THE WITNESS: I'm sorry.

23 THE ARBITRATOR: Did it
24 happen that Sarah had -- did
25 Sarah have its own website?

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1 CROSS EXAMINATION OF MR. SPANO

2 THE WITNESS: No, I don't
3 believe so. The Sarah website,
4 no, did not exist.

5 THE ARBITRATOR: Okay.

6 Okay. So when was the first time
7 that there was a website that
8 promoted the Pal Zileri products?

9 THE WITNESS: Well, when the
10 doctors asked to build Pal Zileri
11 website for the USA.

12 THE ARBITRATOR: And when
13 was that? Do you remember?

14 THE WITNESS: I don't
15 remember, but I think it was
16 probably two years after we
17 opened the store. If I recall
18 correctly, it wasn't -- it wasn't
19 right away.

20 THE ARBITRATOR: Okay. And
21 what was the reaction of Forall
22 when the doctors asked them that?

23 THE WITNESS: Forall agreed
24 to let them operate the website
25 in the U.S., of course, going by

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1 CROSS EXAMINATION OF MR. SPANO

2 our standards. But, the
3 agreement was for them to build
4 their website and operate their
5 website.

6 THE ARBITRATOR: Did Forall
7 take any financial responsibility
8 in connection of the expense of
9 building the website?

10 THE WITNESS: No.

11 THE ARBITRATOR: Mr. Brown,
12 do you have any more questions in
13 this area?

14 MR. BROWN: Not in this
15 area.

16 THE ARBITRATOR: Okay.
17 Next.

18 MR. BROWN: Thank you. Bear
19 with me as I --

20 MR. LEWIS: Can I make a
21 suggestion?

22 THE ARBITRATOR: Yes.

23 MR. LEWIS: Depending on how
24 much more Mr. Brown has on his
25 cross, should we talk about when

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1 CROSS EXAMINATION OF MR. SPANO

2 we would break for lunch or do
3 you think Mr. Spano would be
4 completed before we break?

5 MR. BROWN: No. I don't see
6 that being the case.

7 THE ARBITRATOR: All right.
8 Guys, well, it's up to you. You
9 want to keep going or are you
10 ready for a break, Mr. Brown, if
11 you're headed to a new area.

12 MR. BROWN: Sure. I am
13 going to a new area.

14 THE ARBITRATOR: How much
15 more do you think you have on the
16 witness, Mr. Brown, and I'm not
17 going to stick it to you if you
18 go over, because it's hard to
19 always estimate.

20 MR. BROWN: I think I
21 probably have 45 minutes with
22 him.

23 THE ARBITRATOR: Okay. All
24 right, everyone. 2:00, let's
25 resume, but sharp at 2:00 let's

49 (Pages 190 to 193)

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1 CROSS EXAMINATION OF MR. SPANO
 2 resume and then we'll finish up
 3 with the witness, and we'll go to
 4 our next witness thereafter.
 5 Thank you.
 6 (Whereupon, a lunch break
 7 was taken.)
 8 THE ARBITRATOR: Mr. Brown,
 9 why don't you proceed?
 10 Q. Thank you. Thank you Luca.
 11 Based on your recollection, how many
 12 seasons did -- selling seasons did
 13 Sarah operate the store during your
 14 tenure?
 15 A. Selling season, let's see.
 16 While I was involved?
 17 Q. Yes.
 18 A. I believe eight.
 19 Q. And aren't there two seasons per
 20 year?
 21 A. Correct.
 22 Q. And do you recall that Sarah
 23 opened up the Pal Zileri store in
 24 September of 2011?
 25 A. Yes, now I do.

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1 CROSS EXAMINATION OF MR. SPANO
 2 Q. And do you recall that Italnord
 3 took over operations and management of
 4 the store in September of 2013?
 5 A. Yes.
 6 Q. Isn't that accurate?
 7 A. That's correct.
 8 Q. So they operate -- Sarah ran the
 9 store for -- for two years from
 10 September of '11 to September of '13
 11 for those buying seasons, correct?
 12 A. Yes.
 13 Q. That would be four total buying
 14 seasons?
 15 A. Yes. Actually, I misunderstood
 16 the question about the Pal Zileri store
 17 because I kept going also with Mr.
 18 Entebi and helped him out as well.
 19 Q. So Sarah was still on the lease
 20 and the license agreement was still in
 21 effect, correct, during that time?
 22 A. Correct.
 23 MR. LEWIS: Objection.
 24 Calls for a legal conclusion.
 25 Q. But they weren't actually

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1 CROSS EXAMINATION OF MR. SPANO
 2 managing -- they weren't making the
 3 purchases for the time that Italnord
 4 was operating the store, right?
 5 A. Correct.
 6 Q. And you did some buys for them,
 7 right, or you helped them with that, I
 8 should say?
 9 A. Right, I helped them with it.
 10 Q. And how many -- how many of the
 11 seasons did you assist them with?
 12 A. Since the beginning until --
 13 until I left, basically.
 14 Q. So all four seasons you assisted
 15 Sarah with the purchases?
 16 A. Yes.
 17 Q. And is it your testimony that
 18 for those two years that you operated
 19 the store, they did not purchase
 20 \$900,000 worth of product from Forall?
 21 MR. LEWIS: Objection.
 22 A. Yearly?
 23 Q. Yes.
 24 A. Correct, they did not purchase
 25 \$900,000 yearly.

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1 CROSS EXAMINATION OF MR. SPANO
 2 Q. And what are you basing that
 3 understanding on?
 4 A. From the record that we placed.
 5 Q. Did you, in advance to your
 6 testimony, refer to any paperwork or
 7 any documents to refresh your
 8 recollection on those purchases?
 9 A. No.
 10 Q. So are you just going off your
 11 recollection?
 12 A. Right.
 13 Q. And is it possible that
 14 recollection is flawed?
 15 A. Let me think for one moment. If
 16 that happened probably it's the first
 17 two seasons within the first year, but
 18 I -- I don't recall them spending
 19 \$900,000 in one year.
 20 Q. You do or do not?
 21 A. I do not.
 22 Q. And I'm going to share the
 23 screen and put an exhibit that's
 24 already been introduced. This is the
 25 licensing agreement you were asked

50 (Pages 194 to 197)

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1 CROSS EXAMINATION OF MR. SPANO
2 questions about by Mr. Lewis. Do you
3 see Section 4.2?

4 A. Yes.

5 Q. So there was an obligation under
6 the license agreement for Sarah to
7 purchase \$900,000 per calender year,
8 right?

9 A. Correct.

10 Q. So if they operated the store
11 for two years, the minimum requirement
12 was that they purchase \$1.8 million of
13 product; isn't that correct?

14 A. That's correct.

15 Q. Okay. I'm going to show you
16 another exhibit that is Joint Exhibit
17 130, okay? And it's Bates labeled
18 Forall 149. This is an e-mail -- it's
19 a forwarded e-mail, but the e-mail
20 originated from you in February of
21 2014. Just take a minute and read
22 this, please.

23 MR. SHAH: Sorry.

24 Mr. Brown, could you repeat the
25 Bates label?

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1 CROSS EXAMINATION OF MR. SPANO

2 MR. BROWN: Exhibit 130,
3 it's Bates labeled Forall 149.

4 Q. Do you recall this e-mail Luca?

5 A. Vaguely I do, yes.

6 Q. And we'll get to the first part
7 where you're talking about the credits,
8 but why were you sending this e-mail to
9 -- strike that.

10 Who is Michelle Gioffre, Gina
11 Sedlarcik, Christian Zanin, and Palma
12 Settini?

13 A. She's -- what's her title --
14 she --

15 Q. They all worked with Palma in
16 her office?

17 A. That is correct. I cannot think
18 of the word, but she's the one that
19 sends taxes.

20 Q. They do accounting and back
21 office work for Forall, correct?

22 A. Correct, yes.

23 Q. And do you recall that at the --
24 when you sent this, this was while
25 Italnord was managing the store?

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1 CROSS EXAMINATION OF MR. SPANO

2 A. I don't recall it.

3 Q. Well, Italnord took over in
4 September of '13, correct?

5 A. Yes. If you -- yes.

6 Q. And this e-mail is February of
7 '14, right, and you say that you're
8 doing final numbers for Sarah LLC,
9 right?

10 A. Yes.

11 Q. And you say here in the third
12 paragraph, "I'm also enclosing a
13 spreadsheet. The total amount divided
14 by construction amount and credits
15 given for it," right?

16 A. Yes.

17 Q. Do you recall where you were
18 pulling these figures from?

19 A. No, I don't recall where I was
20 pulling it from. No, I don't.

21 Q. Did you have access to
22 accounting software or was there some
23 other repository you were able to pull
24 figures with Sarah out from?

25 A. Well, this -- I had -- I believe

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1 CROSS EXAMINATION OF MR. SPANO

2 I had copies of invoices and things
3 that were sent to me; that's how I came
4 up with the number.

5 Q. And you were tracking
6 construction cost and credits why?

7 A. Because Forall USA -- I had to
8 give them credits for what was owed to
9 them.

10 Q. And that was under the license
11 agreement that Forall commit to
12 reimburse construction cost 50/50 with
13 Sarah, right?

14 A. That is correct.

15 Q. And did Forall, in fact,
16 reimburse those construction cost 50/50
17 to Sarah?

18 A. Yes, they did.

19 Q. And there was also an obligation
20 for Forall to send certain amounts on
21 advertising under the licensing
22 agreement with Sarah, correct?

23 A. That's correct.

24 Q. And did Forall live up to those
25 commitments under the license

51 (Pages 198 to 201)

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1 CROSS EXAMINATION OF MR. SPANO
2 agreement?

3 A. Yes, they did.

4 Q. Are you aware of the fact in
5 this case that Sarah has alleged that
6 Forall did not reimburse them the full
7 amount of construction cost?

8 A. No, I'm not aware of that.

9 Q. Do you believe that to be an
10 accurate allegation by Sarah?

11 A. As far as -- yes.

12 Q. That's an accurate accusation
13 that they were not reimbursed the
14 appropriate amount of construction
15 cost?

16 A. Yes. Because I worked closely
17 with BSI, Palma Settimi's office and
18 Italy, and if that would have happened,
19 I would be aware of it, yes.

20 Q. I guess I'm not clear -- if I'm
21 not hearing you right, I'm not sure,
22 but let me rephrase the question then.

23 Do you believe that -- you've
24 already answered this.

25 Do you believe that the

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1 CROSS EXAMINATION OF MR. SPANO
2 allegation by Sarah that they were not
3 reimbursed full construction cost, is
4 that an accurate allegation?

5 A. No, it's not. They were
6 reimbursed for and they were given
7 credits for what they were owed.

8 Q. And the allegation that they --
9 that Forall did not spend or reimburse
10 appropriate advertising costs, is that
11 an accurate allegation?

12 A. Until I was there, every credit
13 was given.

14 Q. Okay. So enclosed with your
15 e-mail was a spreadsheet, right, you've
16 reference it here?

17 A. Yes.

18 Q. I'm going to go to that next
19 page, which is the spreadsheet. Okay.
20 Do you see this? Do you recognize
21 this?

22 A. Of course.

23 Q. Did you create this document?

24 A. Yes, I did.

25 Q. And where did you get these

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1 CROSS EXAMINATION OF MR. SPANO
2 numbers that are on here? There's
3 construction cost and credits and
4 invoices received; do you see that?

5 A. Yes. These are all invoices
6 from the contractor and these were
7 provided to me by Sarah and the
8 construction company.

9 Q. Okay. And based on this
10 spreadsheet and the information that
11 you had, what was the total
12 construction cost for the build out?

13 A. 948,698.17.

14 Q. And the obligation to reimburse
15 Sarah by Forall was 50 percent of those
16 costs, correct?

17 A. Correct.

18 Q. And you have a line that says
19 "Contributions, 50 percent," do you see
20 this line?

21 A. Yes.

22 Q. Is that 474,349 is that half of
23 948,698?

24 A. I believe so.

25 Q. Yes, it is. I can tell you

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1 CROSS EXAMINATION OF MR. SPANO
2 that. I just did the math, and you did
3 it on the spreadsheet, right?

4 A. Yes.

5 Q. It seemed like you have a
6 credited line totaling 512; do you see
7 that?

8 A. Yes.

9 Q. So based on this, did Forall
10 credit 512,639 to Sarah?

11 A. Yes.

12 Q. Why did it credit it -- why did
13 it credit more than 50 percent of the
14 construction cost?

15 A. It must have been some credits
16 maybe on uniform or something that we
17 give extra for the employees or maybe
18 for an advertisement.

19 Q. But the obligation was specific
20 to construction build out cost, right,
21 the reimbursement under the license
22 agreement?

23 A. That's correct.

24 Q. And you see this you have an
25 amount left, "38,289" right?

52 (Pages 202 to 205)

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1 CROSS EXAMINATION OF MR. SPANO
 2 A. Yes.
 3 Q. Isn't that amount the difference
 4 between 512, the credits given, and the
 5 contribution allotment of 4744 that's
 6 38,000, correct?
 7 A. Correct.
 8 Q. So this \$38,000 figure, wasn't
 9 that an overage of credit that was
 10 applied to Sarah's invoices rather than
 11 an underpayment?
 12 A. Yes.
 13 MR. LEWIS: Objection.
 14 A. Yes.
 15 MR. LEWIS: I objected to
 16 that, Mr. Farber.
 17 THE ARBITRATOR: I can't
 18 hear. Say it again.
 19 MR. LEWIS: I'm objecting to
 20 Mr. Brown's testimony they're
 21 drawing a conclusion as to what
 22 this represents. It also calls
 23 for speculation.
 24 THE ARBITRATOR: Overruled.
 25 You can answer. Was this an

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1 CROSS EXAMINATION OF MR. SPANO
 2 overage?
 3 THE WITNESS: Yes.
 4 Q. Do you have any understanding as
 5 to why Sarah's seeking in this lawsuit
 6 \$38,000 in additional from Forall?
 7 A. I don't know.
 8 Q. Doesn't this spreadsheet
 9 indicate that actually Sarah owes
 10 Forall \$38,000 for an overpayment or
 11 over-application of credit?
 12 A. Correct.
 13 Q. Do you have any other
 14 explanation for that?
 15 A. No.
 16 THE ARBITRATOR: I'm not
 17 sure I understand the question.
 18 Explanation for?
 19 MR. BROWN: Does he have any
 20 other explanation as to why Sarah
 21 would be seeking \$38,000 for
 22 construction cost from Forall in
 23 this lawsuit?
 24 A. No, I don't.
 25 Q. Okay. Now, I go to the blue

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1 CROSS EXAMINATION OF MR. SPANO
 2 portion, "Invoices received to date,"
 3 okay, There's a \$1,059,000 entry here
 4 with 2010 to 2011 years; do you see
 5 that?
 6 A. Yes.
 7 Q. What does that represent?
 8 A. This represents the regular
 9 seasons and probably some made to
 10 measure and some of the assortments.
 11 Q. But the million dollar figure is
 12 an invoice total of purchases by Sarah
 13 from Forall, correct?
 14 A. That's correct.
 15 Q. Now, we've established that the
 16 store was opened in September 2011,
 17 correct?
 18 A. Yes.
 19 Q. So you have a 2010 to 2011
 20 grouping here, but do you have, as you
 21 sit there today, an understanding as to
 22 why you ground it that way?
 23 A. Because, you know, we work six
 24 months in advance, in order to deliver
 25 the goods during that period, so these

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1 CROSS EXAMINATION OF MR. SPANO
 2 are the invoices they made in 2010 and
 3 2011.
 4 Q. Okay. But they weren't
 5 operating the store in 2010 at any
 6 point, right?
 7 A. No. They placed an order in
 8 2010.
 9 Q. What was -- we've established
 10 the date of the license agreement was
 11 March 11th, right?
 12 A. Yes.
 13 Q. So as you sit here today, do you
 14 know if they placed an order in 2010?
 15 MR. LEWIS: Objection.
 16 Asked and answered. He just
 17 testified that they did.
 18 THE ARBITRATOR: We'll --
 19 well, he did say that, Counselor,
 20 I've got it. He said that they
 21 placed an order in '10.
 22 MR. BROWN: I would like to
 23 check his memory on that, because
 24 I would like to know what he's
 25 basing that recollection on.

53 (Pages 206 to 209)

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1 CROSS EXAMINATION OF MR. SPANO

2 THE ARBITRATOR: All right.

3 You can probe it. Go ahead.

4 Overruled. You can go ahead, Mr.
5 Brown.

6 MR. BROWN: Thank you.

7 Q. As you sit here today, do you
8 know specifically if they placed an
9 order in 2010?10 A. Well, the store opened in 2011,
11 correct?

12 Q. That's what document indicates.

13 A. What I probably mean by this is,
14 again, we placed the order in 2010, and
15 then during the period 2010, 2011, they
16 received this amount of merchandise.17 That doesn't mean necessarily
18 that, you know, they received the
19 merchandise in 2010. They may have
20 received it in 2011, but the order was
21 placed, maybe, in 2010.22 Q. Okay. So these invoices, this
23 breakdown, you haven't broken it down
24 by selling season, though, have you?

25 A. This is -- a PSI will be able to

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1 CROSS EXAMINATION OF MR. SPANO
2 give you this breakdown.

3 Q. Okay.

4 A. These are what I get from them,
5 and then I match them to the ones that
6 are sent from Italnord.

7 Q. And PSI being Palma Settimi?

8 A. That's correct.

9 Q. So and then there's an entry of
10 2012 of 598,044; do you see that?

11 A. Yes.

12 Q. And then there's an entry for
13 2013, 544,939, right?

14 A. Correct.

15 Q. And again, these selling seasons
16 are not indicated on this -- this
17 summary sheet, but the invoices would
18 bear that out; is that your testimony?

19 A. That's correct.

20 Q. And the total of -- so this
21 number 2.2 -- \$2,202,469; do you see
22 that total amount?

23 A. Yes.

24 Q. Is that the total of those
25 invoices in those periods of times?

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1 CROSS EXAMINATION OF MR. SPANO

2 A. Yes, they are.

3 Q. But does that mean that Sarah
4 purchased 2.2 million dollars worth of
5 product during that period?6 A. That means they were invoiced
7 2,202,469.59.8 Q. Okay. And we've established
9 already that they operate the store for
10 a total of four seasons, correct?

11 A. Correct.

12 Q. And at \$900,000 a year for two
13 years, the minimum purchase requirement
14 was 1.8 million dollars, right, under
15 the license agreement?

16 A. Right.

17 Q. So is that right?

18 A. Yes.

19 Q. So does your spreadsheet here
20 not indicate that they had actually
21 exceeded 1.8 million dollars for this
22 two-year time period in purchases?

23 MR. LEWIS: Objection.

24 THE ARBITRATOR: What's the
25 objection?

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1 CROSS EXAMINATION OF MR. SPANO

2 MR. LEWIS:

3 Mischaracterizing the testimony,
4 Mr. Farber. It's not for the
5 two-year period. This is
6 starting with the season in 2010,
7 and we know that Mr. Entebi did
8 not take over until the end of
9 2013. It is not just based on
10 the calendar years, the two
11 calendar years.12 THE ARBITRATOR: Well, I'm
13 going to overrule the objection,
14 principally, because of the
15 objection. I think that
16 Mr. Brown is trying to clarify
17 exactly the point of the
18 objection, so we're going to let
19 him clarify whether this is
20 really for four seasons or five.21 So why don't you go ahead
22 and -- and continue. You can
23 continue Mr. Brown.24 MR. BROWN: Can you read the
25 question back?

54 (Pages 210 to 213)

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1 CROSS EXAMINATION OF MR. SPANO

2 (Whereupon, a portion of the
3 record was read back.)

4 THE ARBITRATOR: Can you
5 answer that, Mr. Spano?

6 A. This spreadsheet, as the judge
7 was referring to, this is supposed
8 to -- I think it has five selling
9 seasons here, not four. Because you
10 have -- 2010, 2011 is one, and then you
11 have two in '12 and two in '13.

12 THE ARBITRATOR: Well, if
13 the store opened in March '11,
14 would they have carried the
15 winter of '10 to '11 or would
16 they have started with summer
17 '11.

18 THE WITNESS: They would
19 start with spring, summer 2011.

20 THE ARBITRATOR: So you're
21 going to have --

22 MR. BROWN: Mr. Farber, if I
23 may, though, the store didn't
24 open until September 2011. They
25 didn't have possession of the

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1 CROSS EXAMINATION OF MR. SPANO

2 lease for the build out until
3 July of '11, and they had a build
4 out completed and open in
5 September of '11.

6 THE ARBITRATOR: Fair
7 enough. So do you remember, Mr.
8 Spano, what the first collection
9 was that was available for sale
10 when the shop actually opened to
11 customers?

12 THE WITNESS: Well, it must
13 have been autumn, winter 2011.

14 THE ARBITRATOR: I didn't
15 hear the last thing you said.

16 THE WITNESS: It must have
17 been autumn, winter 2011.

18 THE ARBITRATOR: Okay. So
19 it would have been '11 to '12,
20 and then '12, and then '12 and
21 '13, and then '13. So then
22 wouldn't that really be four
23 seasons?

24 THE WITNESS: You will have
25 autumn, winter '11, spring,

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1 CROSS EXAMINATION OF MR. SPANO

2 summer '12, autumn, winter '12,
3 spring, summer '13, and autumn,
4 winter '13.

5 THE ARBITRATOR: Okay.
6 We've got it. So you'd have
7 four.

8 MR. LEWIS: That's five.

9 THE ARBITRATOR: I'm sorry.
10 You're right. So you've got
11 five.

12 MR. BROWN: So let me ask a
13 follow up question then.

14 Q. When Alfonso took over the store
15 in September of '11 --

16 A. Yes.

17 Q. -- didn't they make the --

18 MR. LEWIS: Objection.

19 THE ARBITRATOR: I don't
20 think Alfonso took over in
21 September '11.

22 MR. BROWN: I'm sorry.
23 2013.

24 Q. When Alfonso took over in
25 September 2013, didn't Alfonso purchase

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1 CROSS EXAMINATION OF MR. SPANO

2 the autumn, winter '13 products for the
3 store?

4 A. No. I don't -- I don't remember
5 how the transition went. I don't
6 exactly remember the transition went
7 [sic]. An order for autumn, winter '13

8 was placed six months prior, so there
9 was already an order that was placed,
10 and this was placed by Sarah. Then I
11 don't remember if later on something
12 between the two of them was agreed upon
13 in order to take in this order.

14 Q. So you don't know?

15 A. I don't.

16 Q. Okay. So if there was -- let's
17 assume arguendo that there was five
18 selling seasons, right, what would the
19 total amount that would have to been
20 purchased by Sarah would have been
21 [sic]?

22 A. Let me calculate it for you.
23 Hold on one second. So I'm going by
24 the agreement, of course.

25 Q. Which I'll pull up right now.

55 (Pages 214 to 217)

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1 CROSS EXAMINATION OF MR. SPANO
 2 A. 2,250,000 for the five seasons.
 3 Q. I'm sorry.
 4 A. 2,250,000 for the five seasons.
 5 Q. I come up with 2.3, right?
 6 MR. BROWN: What did he say?
 7 2,250,000, alright.
 8 Q. So -- let's -- let's assume
 9 there were five seasons. If there was
 10 four they were over, and if it was five
 11 they were --
 12 A. Under.
 13 Q. They bought -- so they were --
 14 what -- under your map they were
 15 \$23,000 off of that figure; is that
 16 right?
 17 A. That's correct.
 18 Q. \$23,000. Okay. So -- so you
 19 indicated that -- did the CEO of Forall
 20 ever indicate in writing that Sarah did
 21 not have to make the minimum purchases
 22 under the license agreement, to your
 23 knowledge?
 24 A. I don't recall that, no.
 25 Q. Did Forall expect that for the

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1 CROSS EXAMINATION OF MR. SPANO
 2 10-year term of this license agreement
 3 that Sarah would make those minimum
 4 purchases going forward for the next
 5 years?
 6 MR. LEWIS: Objection.
 7 Mr. Spano can't speculate about
 8 the organization's state of mind.
 9 THE ARBITRATOR: He's not
 10 speculating. Someone may have
 11 told him or he may have read it.
 12 So we'll see what he says, and if
 13 it needs to be explored further
 14 we can do so.
 15 So you can answer that.
 16 Overruled.
 17 A. That was the goal of the
 18 company.
 19 THE ARBITRATOR: Did anyone
 20 say that to you or did you read
 21 that?
 22 THE WITNESS: During our
 23 meetings that we had also with
 24 the doctors, we discussed this --
 25 this was our ultimate goal to

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1 CROSS EXAMINATION OF MR. SPANO
 2 have the store doing these kind
 3 of numbers.
 4 THE ARBITRATOR: Okay. Go
 5 ahead, Counselor.
 6 Q. Wasn't the \$900,000 minimum
 7 purchase requirement incorporated in
 8 the license agreement so that Forall
 9 could make money and recoup its
 10 investment with the store?
 11 A. Of course. The CFO of the
 12 company, of course, had the budget in
 13 mind in order to recoup the cost and
 14 make the company profitable.
 15 Q. Now, you testified before just
 16 at one point that you believe there may
 17 have been a different agreement with
 18 Forall and Alfonso and Italnord which
 19 Italnord was managing the store; were
 20 you privy to that agreement?
 21 A. I read the agreement, yes. But
 22 I was not part of -- of the initial
 23 discussion.
 24 Q. Did you -- did you see a written
 25 agreement to that effect that stated

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1 CROSS EXAMINATION OF MR. SPANO
 2 that?
 3 A. Yes, I did.
 4 Q. Where did you see that?
 5 A. I saw it during a meeting in
 6 Italy.
 7 Q. And was that specific to Las
 8 Vegas?
 9 A. Correct.
 10 Q. Who showed that to you?
 11 A. Well, in a meeting that we had
 12 also with Alfonso Entebi, CEO, and my
 13 colleagues in Italy, this was discussed
 14 and we went over it.
 15 Q. Am I still sharing my screen?
 16 A. I see it.
 17 Q. This is the consent agreement
 18 between Forall and -- Sarah and Forall.
 19 This was on all of the pleadings, and
 20 let's see -- let's get this exhibit
 21 number for you, though.
 22 I'm going to exhibit on my joint
 23 list, and I'm going to share my screen
 24 again, and we're going to go to the
 25 document. This is the stipulation and

56 (Pages 218 to 221)

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1 CROSS EXAMINATION OF MR. SPANO
2 consent agreement between Sarah and
3 Forall. Luca, have you ever seen this
4 before?

5 A. I believe so.

6 Q. And the signature at the end
7 here is signed by Forall USA; do you
8 recognize that signature?

9 A. Yes.

10 Q. Who is that?

11 A. Palma Settimi, I believe.

12 THE ARBITRATOR: I couldn't
13 hear. Say it again.

14 A. Palma Settimi, I believe.

15 THE ARBITRATOR: All right.

16 Q. So what was your understanding
17 at the time that Sarah contracted with
18 Italnord to manage the store in
19 September of '13?

20 A. My understanding was that when
21 Mr. Entebi decided to try to get into
22 the Pal Zileri store in Las Vegas,
23 there was going to be a management
24 agreement, being that he did not want
25 to have a full responsibility for the

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1 CROSS EXAMINATION OF MR. SPANO
2 store, so Italy and the doctor, and
3 Italnord, they came to an agreement.
4 They put this in place.

5 Q. Okay. And what -- do you know
6 if Forall was party to any agreement
7 related to that other than the
8 stipulation and consent, which is shown
9 here?

10 A. No.

11 Q. Okay. And in this agreement,
12 isn't it the case that Forall consented
13 to the management of the store by
14 Italnord, but it, itself, was not a
15 party to that agreement; isn't that
16 right?

17 A. That is correct.

18 Q. And under this agreement that
19 you've seen before, it says here that
20 "One, Forall hereby consents the
21 operation of the business by manager";
22 do you see that?

23 A. Yes.

24 Q. And then "Two, the company,
25 which is Sarah, shall continue to be

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1 CROSS EXAMINATION OF MR. SPANO
2 responsible for and will remain in
3 compliance at all times with company's
4 obligations under lease agreement with
5 the Forum shops LLC at Caesars Las
6 Vegas," right?

7 A. Right.

8 Q. And do you remember that being
9 that that's exactly what you were --
10 Forall was trying to accomplish at that
11 time?

12 A. That is correct, I do remember.

13 Q. Right. And then "Three, during
14 the term of the management agreement
15 only, Forall shall look to the manager,
16 and hold the manager responsible -- the
17 manager being Italnord -- responsible
18 for the performance of obligations
19 under the license agreement. To the
20 extent that the management agreement is
21 terminated, at such time the company
22 shall again be responsible for the
23 performance of all obligations under
24 the license agreement"; do you see
25 that?

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1 CROSS EXAMINATION OF MR. SPANO

2 A. Yes.

3 Q. And does that comport with your
4 recollection as to what Forall intended
5 at that time?

6 A. Yes, sir.

7 Q. And then it says, "Four, the
8 company shall not transfer the lease
9 agreement without Forall's prior
10 written consent"; right?

11 A. I see it.

12 Q. So section seven says, "Except
13 for specifically set forth herein,
14 nothing shall act as to waive, limit,
15 or otherwise alter any obligation or
16 liability of the company, and or its
17 principals, owners, members, or
18 guarantors, subject to or arising from
19 the license and retail operating
20 agreement, the lease agreement and or
21 any guaranty undertaking or promise
22 thereunder," right?

23 A. Yes.

24 Q. And wasn't it explained at that
25 time to the claimants that this was a

57 (Pages 222 to 225)

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1 CROSS EXAMINATION OF MR. SPANO
2 temporary management agreement that if
3 terminated they need to take the store
4 back and the obligations stand under
5 the license agreement?

6 A. Well, my understanding is that,
7 being this is a legal paper, the doctor
8 had legal advice on this, and there
9 should have been an understanding of
10 what this meant.

11 Q. When the doctors took the store
12 back after Italnord's management term,
13 were you still with the company?

14 A. When -- I'm sorry. When --

15 Q. Do you recall them taking it
16 back while you were there at -- with
17 Forall?

18 A. Yes, I was still there.

19 Q. What time period was that?

20 A. I think it was 2014 maybe, end
21 of 2013. 2014, yeah. 2014. If my
22 memory is --

23 Q. Okay. But you do recall them
24 coming back after this management
25 agreement and running the store for a

Page 227

1 CROSS EXAMINATION OF MR. SPANO
2 period of time?

3 A. I'm not sure. Yes.

4 Q. There was an allegation
5 pertaining to the advertising costs and
6 the failure to reimburse them, okay.

7 What was -- do you recall what
8 the obligations under the license
9 agreement were with respect to the
10 advertising obligations?

11 A. I believe there was a percentage
12 of the amount purchased, if I remember
13 correctly, and not to go over a certain
14 amount, if I remember correctly. That
15 was the -- the deal.

16 Q. Okay. So I'm going share -- I'm
17 going to go back to the license
18 agreement, okay. And I think 319 --

19 MR. LEWIS: Before you bring
20 this up, Mr. Brown.

21 Mr. Farber, I'm objecting to
22 this, because Mr. Spano was asked
23 this earlier in his testimony,
24 "Did Forall live up to its
25 obligations to reimburse for the

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1 CROSS EXAMINATION OF MR. SPANO
2 advertising," and Mr. Spano
3 answered in the affirmative,
4 "Yes, while I was there we lived
5 up to all of our obligations,"
6 that was his testimony. So I'm
7 not sure if --

8 THE ARBITRATOR: All right.
9 That's true, but why don't we
10 wait for a specific question? It
11 might be a different question. I
12 don't know yet. And then if it
13 is the same thing, the objection
14 will be sustained, but if it's
15 different, then we'll hear what
16 it is. But right now he's just
17 referring him back here.

18 Why don't you ask your
19 question, Mr. Brown.

20 MR. BROWN: Okay.

21 Q. Can you see my screen here,
22 Luca? Okay. So is this the provision
23 in the license agreement that -- I'm
24 sorry -- that governed the advertising
25 expenditures by the parties?

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1 CROSS EXAMINATION OF MR. SPANO
2 A. Yes.

3 Q. Okay. Do you see Section 8.4,
4 "Advertising," and I'll zoom in and
5 scroll down.

6 A. Yes.

7 Q. Didn't this provision obligate
8 the claimant, Sarah, to make certain
9 expenditures on advertising each year?

10 A. Yes.

11 Q. And if he this made those
12 expenditures, Forall was going to match
13 -- Forall shall match such amount,
14 right?

15 A. Yes.

16 Q. Do you know -- you've answered
17 that we've spent all these
18 advertisement -- we reimbursed all the
19 advertisement that was required, but do
20 you know if Sarah, themselves, spent
21 sufficient monies on advertising per
22 this agreement during this agreement
23 during their operation of the store?

24 A. Yes, I believe they did.

25 Q. Okay. But to your knowledge,

58 (Pages 226 to 229)

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1 CROSS EXAMINATION OF MR. SPANO
2 there was never a time that Forall did
3 not make the appropriate expenditures
4 under this provision?

5 A. As I stated before, Forall gave
6 and paid credit for whatever was owed.

7 Q. Okay. Very good.

8 MR. BROWN: I may be at the
9 end, but can I just have a moment
10 to confer with my co-counsel?

11 THE ARBITRATOR: Yes.

12 MR. BROWN: Thank you.

13 THE ARBITRATOR: Why don't
14 we take just five. No more than
15 five, all right?

16 MR. BROWN: Thank you.
17 (Whereupon, a recess was
18 taken at this time.)

19 THE ARBITRATOR: Mr. Brown,
20 anything further?

21 MR. BROWN: No. Thank you.

22 THE ARBITRATOR: Mr. Lewis,
23 do you have anything further?

24 You're on mute, Mr. Lewis.

25 MR. LEWIS: Very brief

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1 CROSS EXAMINATION OF MR. SPANO
2 redirect for Mr. Spano.

3 THE ARBITRATOR: Gentleman,
4 ladies, two conventions that I'd
5 like to observe on re-direct and
6 re-cross, all right? Number one,
7 it's not necessary to repeat. A
8 lot of times, Counsel thinks that
9 the arbitrator kind of forgot
10 stuff and then they repeat what
11 was said in the direct or on the
12 cross. It's not necessary. Only
13 new material.

14 Number two, no re-re.
15 Unless there's some extraordinary
16 reason. Each one gets one shot
17 and that's it. All right?

18 Mr. Lewis, go ahead.

19 MR. LEWIS: Well, at the
20 risk of violating Mr. Farber's
21 instruction there, I want to just
22 clarify.

23 THE ARBITRATOR: Clarify is
24 okay.

25 * * *

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1 RE-DIRECT EXAMINATION OF MR. SPANO
2 RE-DIRECT EXAMINATION BY
3 MR. LEWIS:

4 Q. Mr. Spano, you said that the
5 spreadsheet -- and this was joint
6 Exhibit 130 that was shared.

7 The spreadsheet, it represented
8 invoices, correct?

9 A. Right.

10 Q. It was not a reflection of
11 payments, of who actually paid for
12 merchandise, right?

13 A. Correct.

14 Q. And you testified that you
15 didn't recall where those numbers came
16 from; I want to make sure that we
17 understand that?

18 A. No, I didn't say that.

19 Q. Okay. Can you please clarify
20 that for us?

21 A. All the information I got from
22 Palma Settimi's office. They are the
23 ones that received the invoices, and
24 then I received copies of the invoices
25 from Italy as well. But my liaison is

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1 RE-DIRECT EXAMINATION OF MR. SPANO
2 Palma Settimi's office, which she did
3 all the accounting for -- for Forall.

4 Q. So, Mr. Spano, do you remember
5 Forall sending a check for \$38,000 to
6 Italnord; do you recall that?

7 A. Me sending a check?

8 Q. Not you personally. Forall
9 sending a check for \$38,000 to
10 Italnord?

11 A. No, I don't recall that.

12 Q. Nothing further, Mr. Spano.

13 THE ARBITRATOR: Anything
14 else, Mr. Brown?

15 MR. BROWN: No.

16 THE ARBITRATOR: Mr. Spano,
17 I just have one or two questions
18 for you. Mr. Spano, was there
19 ever a discussion that you
20 recollect whereby Forall agreed
21 for the rest of this contract,
22 the rest of the 10 years, we're
23 not going try to have sales of
24 \$900,000 a year?

25 THE WITNESS: No, I don't

59 (Pages 230 to 233)

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1 RE-DIRECT EXAMINATION OF MR. SPANO
2 recall that.

3 THE ARBITRATOR: Was -- did
4 the \$900,000 a year remain at
5 least as the minimum the goal?

6 THE WITNESS: We had to go
7 according to the contract, and
8 that's what the contract that was
9 agreed upon during the
10 transition.

11 THE ARBITRATOR: Well, when
12 you say now, "We had to go
13 according to the contract," in
14 other words, you're telling me
15 the contract always remained in
16 effect, right?

17 THE WITNESS: That's
18 correct.

19 THE ARBITRATOR: Okay. All
20 right. Mr. Spano, thank you very
21 much for your testimony. You're
22 excused.

23 THE WITNESS: Thank you so
24 much.
25 * * *

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1 PROCEEDINGS

2 THE ARBITRATOR: Thank you.
3 Okay. Who is our next witness,
4 Mr. Lewis? It's going to be
5 Dr. Hamad Bachar -- excuse me,
6 Amar Hamad. Okay.

7 Dr. Hamad, are you alone in
8 a room right now, sir?

9 THE WITNESS: Yes.

10 THE ARBITRATOR: Okay.
11 Could you please stand for a
12 moment? Let me still see you on
13 the screen. Could you raise your
14 right hand? Do you solemnly
15 swear the testimony you're about
16 to give in this arbitration
17 proceeding will be the truth, the
18 whole truth, and nothing but the
19 truth?

20 THE WITNESS: Yes.

21 THE ARBITRATOR: Could you
22 be seated, sir, spell your full
23 name for me and let me have an
24 address, which could either be
25 work or an office, as you choose?

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1 PROCEEDINGS

2 THE WITNESS: First name
3 Amar, A-M-A-R. Last name Hamad,
4 H-A-M-A-D. And address 1 Andrew
5 Court, it's Burr Ridge, Illinois
6 60527.

7 THE ARBITRATOR: Okay. It's
8 Dr. Hamad, is that right?

9 THE WITNESS: Yes, sir.
10 Thank you.

11 THE ARBITRATOR: So, Dr.
12 Hamad, Mr. Lewis, your lawyer is
13 going to be asking you some
14 questions. And I know you were
15 here when I gave the protocol to
16 the other witness, so I'd like
17 you to observe the same protocol.
18 At the end of each question,
19 pause.

20 Mr. Brown, you're handling
21 this one?

22 MR. BROWN: Yes, Your Honor.

23 THE ARBITRATOR: So if Mr.
24 Brown says the word "objection,"
25 do not answer the question until

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 I tell you whether you should do
3 so, all right, otherwise just
4 listen to Mr. Lewis' question and
5 try to respond as directly and as
6 succinctly as you can. All
7 right?

8 THE WITNESS: Okay.

9 THE ARBITRATOR: Counsel,
10 you can proceed.
11 D R. A M A R H A M A D, the witness
12 herein, having been first duly sworn by
13 a Notary Public of the State of New
14 York, was examined and testified as
15 follows:

16 DIRECT-EXAMINATION
17 BY MR. LEWIS

18 Q. For me, Dr. Hamad, your
19 microphone is a little -- a little
20 high.

21 MR. LEWIS: I don't know if
22 that's coming through for
23 everyone else.

24 MR. BROWN: It is. Little
25 blaring and hard to make out.

60 (Pages 234 to 237)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Do you hear me now?

3 Q. It's almost a little too loud,
4 if there's a little way to adjust it
5 down just a bit.

6 A. One second. Let me see how I do
7 it.

8 Q. That's better there.

9 A. Okay. Do you hear me now?

10 THE ARBITRATOR: I hear you
11 loud and clear.

12 THE WITNESS: Okay. Thank
13 you.

14 Q. Thank you. Dr. Hamad, I'm going
15 to ask you to just share with
16 Arbitrator Farber how it came about
17 that you and your brother became
18 involved with Forall?

19 A. It was, I think, early 2008,
20 early 2010, early 2011, a friend of
21 ours was --

22 THE ARBITRATOR: Hang on a
23 minute. There's some siren out
24 of my window, so let me just wait
25 for that to pass.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Are you guys hearing
3 background noise from me?

4 MR. BROWN: There's some
5 disturbance and Dr. Hamad is not
6 too clear, so I hope to make it
7 all out, but --

8 THE ARBITRATOR: All right.
9 If it gets really loud rather
10 than interrupt a witness, I might
11 mute myself so that everyone can
12 hear. Just wait one second more.

13 THE WITNESS: Let me mute
14 myself and see if it goes away.
15 It's not me.

16 THE ARBITRATOR: Okay. I
17 think it left. Okay. Go ahead.

18 Mr. Lewis, why don't you
19 repeat your question because I
20 had interrupted it I want you to
21 repeat your question and then
22 we'll have the answer. All
23 right?

24 MR. LEWIS: Yes. Thank you.
25 Q. Dr. Hamad, please explain to

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Arbitrator Farber how you and your
3 brother came to become involved with
4 Forall.

5 A. It was through a friend of ours
6 who knew Pal Zileri and introduced us
7 to Spano -- actually, my brother was
8 first and then me second.

9 Q. And did there come a time that
10 you spoke with Forall about your plans
11 for the store?

12 A. Yes. After initial discussion
13 with Luca Spano, you know, we -- we had
14 further discussion in this matter.

15 Q. And do you --

16 THE ARBITRATOR: Around what
17 year was that, Dr. Hamad?

18 THE WITNESS: I think it was
19 early -- late 2010, early 2011.

20 THE ARBITRATOR: Okay.

21 Q. And do you recall entering into
22 a license agreement?

23 A. Yes, I did.

24 Q. You've been present for the
25 testimony so far today; is that

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 correct?

3 A. Yes, I did.

4 Q. Did you hear Mr. Spano's
5 testimony about the license agreement,
6 and the specifically Section 4.2 with
7 the minimal purchase requirement?

8 A. Yes, I did.

9 Q. Were you all aware --you and
10 your brother aware of the minimum
11 purchase requirement when Sarah entered
12 into the license agreement?

13 A. Yes, we did.

14 Q. Is it your recollection that --
15 I'll ask you: Did Sarah purchase
16 \$900,000 worth of merchandise each year
17 that it operated the store?

18 A. No.

19 Q. Do you recall having a
20 discussion with the CEO of Forall at
21 the time about the minimum purchase
22 requirement?

23 A. Yes. When we went to Italy.

24 Q. And is your recollection
25 consistent with Mr. Spano that the CEO,

61 (Pages 238 to 241)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 let's just say, deviated from the
3 minimum purchase requirement when you
4 all had that discussion?

5 A. He absolutely confirmed that,
6 and he said it depends on the sales
7 will make purchases [sic].

8 THE ARBITRATOR: Say it
9 again. It depends on what?

10 THE WITNESS: It depends on
11 the prior season's sale, we make
12 purchases or not [sic].

13 THE ARBITRATOR: Exactly who
14 was the CEO who said this?

15 THE WITNESS: Marco, I
16 think, was present. I can't
17 remember the last name, but
18 Marco. There was a CEO, there
19 was the CFO, and there was a
20 marketing person. They were all
21 present.

22 THE ARBITRATOR: Were there
23 minutes taken of this meeting?

24 THE WITNESS: I don't know,
25 sir. I don't recall, but that

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 conversation absolutely
3 100 percent happened.

4 THE ARBITRATOR: All right.
5 Go ahead, sir.

6 Q. Okay. So I want to take it
7 back, but since we mentioned the
8 license agreement, I want to ask that
9 your recollection was consistent with
10 Mr. Spano's about how that meeting went
11 in Italy.

12 But let's go back to the
13 beginning when you opened the store; do
14 you recall when the store opened?

15 A. September 2011.

16 Q. Do you recall how much you and
17 your brother invested into the store
18 while you all operated the store?

19 A. The total between -- the total
20 between build out and merchandise close
21 to 2.2 million dollars.

22 Q. And this is of your -- you and
23 your brother's own personal funds that
24 you invested?

25 MR. BROWN: Objection.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 THE ARBITRATOR: Hang on.
3 Is there an objection?

4 MR. BROWN: Yes. I'm
5 wondering on the relevance of
6 this based on what's been
7 discussed to date, but I'll
8 withdraw it.

9 THE ARBITRATOR: Okay. You
10 can answer.

11 A. It was our savings plus loans on
12 our homes.

13 MR. BROWN: Can you read the
14 answer back?

15 (Whereupon, the record was
16 read by the reporter.)

17 MR. BROWN: Thank you.

18 THE ARBITRATOR: Dr. Hamad,
19 are you a physician.

20 MR. BROWN: Yes. I am an
21 oncologist.

22 THE ARBITRATOR: Okay.

23 Q. Dr. Hamad, did you share with
24 the CEO at the time, Marco, how much
25 you all had invested and where those

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 funds had come from when you were in
3 Italy?

4 A. They were aware of it, yes.

5 Q. And was that part of the
6 discussion as to why you weren't in a
7 position to make the \$900,000 purchase,
8 was that part of that discussion?

9 A. Um, to my recollection, yes.

10 Q. So in 2011 when the store
11 opened, how was business initially?

12 THE ARBITRATOR: Before you
13 go away from the last topic, Dr.

14 Hamad, was this only a -- was
15 this at one meeting? What is
16 Marco's last name, do you know?

17 THE WITNESS: I can't recall
18 honestly, Honor. But he is the
19 CEO. He was also the CFO of the
20 company, and was the chief
21 marketing who was the daughter of
22 the CEO [sic].

23 THE ARBITRATOR: Okay. So
24 was this only at one meeting or
25 more than one meeting that --

62 (Pages 242 to 245)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 THE WITNESS: This is --

3 THE ARBITRATOR: Let me just
4 finish. That Marco said that
5 we're going to base the amount
6 that you're required to buy on
7 last year's sales instead of the
8 \$900,000, was it one time or more
9 than one time?

10 THE WITNESS: This is
11 through some instruction with
12 Spano let to go to the meeting in
13 November of 2012 [sic]. And
14 during the conversation -- this
15 is, like, a year and two months
16 after the fact when the store was
17 not performing.

18 We did the buying, the first
19 season and the second season
20 complete, but we were not able to
21 do a lot of sales, so we had to
22 explain to him the dire need of
23 the store that needs some help
24 and -- you know, so we had that
25 discussion with him.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 THE ARBITRATOR: So let me
3 go back. My question was: Was
4 it only at one meeting?

5 THE WITNESS: Yes.

6 THE ARBITRATOR: Which
7 you're going to tell me was in
8 November of '12, right?

9 THE WITNESS: Yes.

10 THE ARBITRATOR: And this
11 meeting took place in Italy, you
12 said?

13 THE WITNESS: Yes. In the
14 corporate in Venice, Italy in
15 their headquarters.

16 THE ARBITRATOR: Okay. And
17 you don't know -- I'm repeating,
18 but you don't know if minutes or
19 notes were taken of that meeting;
20 is that correct?

21 THE WITNESS: I honestly
22 don't remember.

23 THE ARBITRATOR: And exactly
24 -- well, did anyone say anything
25 about the contract documents,

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 "we're going to draw a new
3 contract," anything to that
4 effect? "We have to amend the
5 contract," did anyone talk about
6 that at that meeting?

7 THE WITNESS: We didn't talk
8 about the contract, but we were
9 trying to find solutions to
10 improve the performance of the
11 store.

12 THE ARBITRATOR: And was it
13 your understanding that this --
14 well, let me ask you this: How
15 did it come about that you --
16 that a measurement of one year's
17 performance was supposed to be
18 based on the prior year? Who
19 suggested that as the new
20 formula?

21 THE WITNESS: That's what --

22 MR. LEWIS: Or did Marco
23 suggest it?

24 THE WITNESS: That was the
25 rules, if I'm not mistaken, and

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 that Mr. Spano said it, that they
3 used to look at past year's
4 performance and then make
5 decisions.

6 THE ARBITRATOR: So do that
7 again. What exactly --

8 THE WITNESS: So that was
9 their rules. That was -- this is
10 what they used to do. They get
11 used to it in a sense they would
12 look at past year's performance,
13 not only for Las Vegas stores,
14 but for most of the stores
15 throughout Europe and Asia and
16 the Middle East. They would look
17 at past performance stores, and
18 then make a decision as far as,
19 you know, how much to buy and
20 sell.

21 THE ARBITRATOR: All right.
22 So I'm not quite understanding
23 then how it would help you,
24 because if the first year you had
25 over a million dollars worth of

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 sales.

3 THE WITNESS: No, we didn't.
4 We did not. It was terrible. It
5 wasn't -- it wasn't the sales.

6 THE ARBITRATOR: Why don't
7 you hold right here. I'm going
8 to let Mr. Lewis continue,
9 because I clarified what I want
10 to know. So we're going to let
11 Mr. Lewis do it his way.

12 Mr. Lewis, why don't you go
13 ahead.

14 MR. LEWIS: Mr. Farber, let
15 me clear this up for you.
16 Marco's last name is Baritza,
17 B-A-R-T-I-Z-A. That is the CEO
18 at the time.

19 And I think Mr. -- Dr. Hamad
20 was having trouble hearing you.
21 I think you guys were probably
22 speaking at the same time.

23 Luca Spano's testimony was

24 --

25 MR. BROWN: I'm going to

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 object on this. Ask a question.
3 Don't clarify your client's
4 testimony.

5 THE ARBITRATOR: Not
6 necessary. I have a pretty good
7 handle on what occurred.

8 Mr. Lewis, what's your next
9 question go ahead.

10 Q. Well, I'll allow you to finish
11 your thought on that, Dr. Hamad. You
12 were saying that when were you in
13 Italy, it was explained to you that the
14 company's policy, generally, was to
15 base future purchases on prior seasons'
16 sales; is that correct?

17 A. Yes.

18 Q. So the store starting to perform
19 poorly in the first season of 2012; is
20 that right?

21 A. Yes.

22 Q. That's what prompted you to
23 reach out to Forall and ask for the
24 meeting to -- to ask for further
25 assistance?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 A. Yes.

3 Q. And so that the sparked the
4 conversation with Marco Baritza about
5 the minimum purchase agreement and
6 whether you all were going to be held
7 to that; is that correct?

8 A. Yes.

9 Q. When you opened the store in
10 2011 -- strike that.

11 When did the store start to
12 struggle? When do you recall starting
13 to realize that the store was in
14 trouble?

15 A. The first day we started.

16 Q. Can you elaborate on that?

17 A. We were led to believe that the
18 projected sales for the store on a
19 yearly basis should be no less than
20 five million dollars.

21 Q. Projected sales?

22 A. For the stores on a yearly basis
23 is supposed to be more than five
24 million dollars, according to Pal
25 Zileri's estimations. And day one we

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 sold -- I still remember that day, and
3 day one we only sold \$800. So we were
4 way short on what we were supposed to
5 be, and from that day on it was a
6 struggle.

7 Q. Who told you that the projected
8 revenue was supposed to be five million
9 a year?

10 A. Pal Zileri leaders. Luca, one
11 of them.

12 Q. And did you base your decision
13 to open the store and operate it where
14 it was, in part, on your understanding
15 of the sales projection?

16 A. Absolutely.

17 Q. So you entered into the license
18 agreement, you also signed a guaranty
19 collateral assignment agreement; did
20 you not?

21 A. Absolutely. Because we believed
22 in every word they told us.

23 Q. Okay. I won't spend the time
24 putting the license agreement back on
25 the screen. You understand what it

64 (Pages 250 to 253)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 says and we've covered that. Give me
3 just a moment. Okay.

4 There's been testimony that
5 Forall was obligated to provide certain
6 discounting to Sarah to cover half of
7 the construction cost; do you recall
8 that?

9 A. Yes, I did.

10 Q. And you heard Mr. Spano's
11 testimony about his understanding, that
12 at least while he was in place, that
13 Forall did indeed provide those
14 discounts, you heard that?

15 A. That's what he said.

16 Q. Do you remember it differently?

17 A. In a couple of areas, yes.

18 Q. Explain for Mr. Farber how you
19 differ with Mr. Spano's testimony?

20 A. The first one -- the \$38,000
21 left over, there was definitely an
22 e-mail saying that this matter should
23 be solved between Sarah LLC and
24 Italnord, and Italnord was supposed to
25 pay us the \$38,000, because they took

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 over the store, but they never did.

3 Q. Let me see if I understand.

4 You're saying that Forall instructed
5 you to pursue Italnord and work with
6 Italnord to get the \$38,000 payment?

7 A. Yes.

8 Q. And that \$38,000 payment was
9 supposed to be what, what did that
10 represent?

11 A. Left over of the construction.

12 Q. The final payment on the
13 construction costs?

14 A. Yes.

15 Q. And did Italnord make that
16 payment?

17 A. Not to my knowledge, no.

18 Q. Did you consent to that
19 obligation being, let's say,
20 transferred to Italnord?

21 A. No, I didn't.

22 Q. You still expected Forall to
23 reimburse you that \$38,000; is that
24 right?

25 A. Yes.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. But otherwise, you do agree that
3 Forall did provide those discounts to
4 otherwise make up for the construction
5 costs, right?

6 A. Absolutely. Absolutely.

7 Q. And on the advertisements, your
8 -- you -- you now agree that Forall did
9 reimburse for its portion of the
10 advertising or do you disagree with
11 that?

12 A. Um, the portion of \$27,000 we
13 agreed, yes, they did. However, we did
14 way above more than the 27,000 in the
15 year -- in the couple of years when we
16 took over the store. We spent tons of
17 money marketing the store, marketing
18 Pal Zileri, worked very hard on
19 promoting the product and the store.

20 And if you look at the tax of
21 2000 -- if I'm not mistaken '12 or --
22 '11 or '12 from our tax return, it was
23 total at \$136,000 in marketing.

24 Q. And that's one year's worth of
25 marketing effort?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. I think if, I'm not mistaken,
3 yes.

4 Q. And we'll pull that document up.
5 And so do you feel as if the \$27,000
6 that Forall had committed to match was
7 sufficient? Was that a sufficient
8 amount to help launch a store in Las
9 Vegas?

10 MR. LEWIS: Objection.

11 THE ARBITRATOR: What's your
12 objection?

13 MR. BROWN: His feeling
14 about the sufficiency of the
15 document he signed, is that the
16 question?

17 THE ARBITRATOR: I think it
18 is.

19 Mr. Lewis, what's the
20 relevance of that? He signed a
21 document that says something.
22 Why do I have to know if he
23 thought it was sufficient or not?

24 MR. LEWIS: Well, I would
25 say that the doctor's

65 (Pages 254 to 257)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 understanding that -- it's an
3 equitable question. It's the
4 equities that I'm inquiring
5 about, whether he had the proper
6 support to make the question
7 equitable.

8 THE ARBITRATOR: Let me
9 understand. The agreement says
10 there's a cap of \$27,000, I
11 think, right?

12 MR. LEWIS: So it would be
13 helpful to get perspective for
14 Mr. Farber as to what 27,000 in
15 advertising in Las Vegas gets and
16 does not get.

17 THE ARBITRATOR: Doctor, you
18 agreed to the contribution by
19 Forall of 27,000; isn't that
20 right.

21 THE WITNESS: I did. But
22 honestly, Mr. Farber, it was
23 peanuts. It was nothing to
24 market the store and the product.
25 Again, that's my feelings.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 THE ARBITRATOR: That may
3 have been, but in light of the
4 fact that you say you did, I have
5 to sustain the objection. Next
6 question.

7 Q. Was Forall obligated to only
8 support advertising in the amount of
9 \$27,000, could they have done more?

10 A. Absolutely.

11 Q. Did you approach Forall with
12 other initiatives to promote the store
13 and the brand?

14 A. Absolutely.

15 Q. Did you approach the store with
16 an opportunity to participate in a
17 Forbes event?

18 A. Yes.

19 Q. Can you explain what that event
20 was?

21 A. It was an event -- actually,
22 there were two really big events. One
23 in Vegas that's called Net Jet Events,
24 and the other one in New York for the
25 Fortune 500 companies.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 We were working hard to promote
3 the product and introduce it to the
4 high end customers. So we felt that
5 those two events will be a great
6 return, not only for the store, but for
7 Pal Zileri in general.

8 Q. And so what happened? Were you
9 ultimately supported on those efforts?

10 A. We spent more than the support
11 they provided, but we were supported.
12 But it wasn't enough support.

13 Q. Did you ask for additional
14 support?

15 A. Yes, we did.

16 Q. To whom did you direct that
17 request for support?

18 A. To Mariola, the daughter of the
19 owner of the company. She's in charge
20 of marketing.

21 THE ARBITRATOR: Do you
22 remember her name?

23 THE WITNESS: I don't
24 remember. The first name
25 Mariola. It's a name and I'll

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 get it for you.

3 THE ARBITRATOR: It's all
4 right. Mariola, you said?

5 THE WITNESS: Yes.

6 MR. LEWIS: Mr. Farber, I'm
7 going to show a document that's
8 an e-mail between Dr. Hamad and
9 Mariola and so we'll have her
10 name.

11 THE ARBITRATOR: All right.

12 Q. Dr. Hamad, are you able to see
13 my screen?

14 A. Yes, I can.

15 Q. Dr. Hamad, take a minute and
16 just read through this e-mail, please.

17 A. I remember it extremely well.

18 Q. Okay. And can you explain to
19 us, generally, about what this
20 conversation is about and who you're
21 having it with?

22 THE ARBITRATOR: This is --
23 is this J3 or 30?

24 MR. LEWIS: 30.

25 THE WITNESS: Can I talk?

66 (Pages 258 to 261)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 THE ARBITRATOR: Yes. Go
3 ahead, Dr. Hamad.

4 A. This is Mariola Manuela. As I
5 said, she's in charge of the marketing.
6 We were having a discussions to build a
7 marketing program for the Pal Zileri in
8 the United States.

9 And we asked for support on
10 those two events, but also to really
11 broaden the marketing so the store can
12 be successful and Pal Zileri can be
13 great.

14 However, as you can see in the
15 answer here, and I get to know then
16 their thoughts is that they're really
17 -- and you can read it on here, you can
18 read it clearly, that they do not want
19 to invest money in the losing market.

20 As opposed to what Mr. Brown
21 said, that this was a phenomenal market
22 in the United States. You know, they
23 already determined that the United
24 States market is a losing market for
25 them. At that moment, I knew that Pal

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 Zileri has no intention whatsoever to
3 support us and take us to the next
4 level.

5 You can read it clearly here in
6 the e-mail. This is just unbelievable.

7 Q. Dr. Hamad, may I interrupt you
8 for a moment, please?

9 A. Go ahead.

10 Q. Let's concentrate on the e-mail.
11 Can you see my cursor?

12 A. Yes.

13 Q. Read for the record, please,
14 just that portion right there?

15 A. "Every year we decide to focus
16 our market strategy in particular
17 countries or project where to
18 concentrate our investment.
19 Considering the present economic
20 situation, we decided last year to
21 focus our budget on the countries where
22 our presence is already consolidated in
23 order to guaranty a return of
24 investment and give stability to that
25 specific market. I'm really sorry not

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 to be able to welcome your proposal. I
3 suggest we start working next year on a
4 budget in order to receive the requests
5 in advance."

6 So meaning -- to me it meant
7 that they knew the United States of
8 America has a losing market and they
9 decided not to invest.

10 Q. Do you feel like you were kind
11 of left out to dry without this kind of
12 support?

13 A. Absolutely.

14 THE WITNESS: Can I make two
15 comments, Honor?

16 THE ARBITRATOR: No, no, no.
17 Just answer Mr. Lewis' questions.

18 Q. So were there other initiatives
19 similar to the Forbes event that you
20 presented to Forall?

21 A. We had LA event where we had a
22 show for a high end and also actors --
23 actors, I'm sorry. Movie stars.

24 Q. Did you ask for support from
25 Forall for that event?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 A. Yes, we asked.

3 Q. And what was the result of that?

4 A. Supported us a little bit not as
5 much as we wanted.

6 Q. Did you ask for additional
7 support for that event?

8 A. We did. But again, I don't
9 recall how much, to be honest with you
10 Mr. Rodney, but I know that we were not
11 100 percent supported.

12 Q. Let's talk about inventory. Do
13 you recall having issues with the
14 inventory that you received from Forall
15 while you were operating the store?

16 A. Yes, I do.

17 Q. Can you explain to Mr. Farber
18 the type of -- of issues that you
19 experienced?

20 A. All the time delayed deliveries.
21 You know, the season -- let me give you
22 an example, Mr. Farber. The season for
23 fall winter starts in August, sometimes
24 we received the first shipment either
25 August or early September, and it goes

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 all the way into October.

3 And typically, a season, start
4 discount in November, so you could
5 imagine receiving some shipment in
6 October to put it on discount sales in
7 November. We complained multiple times
8 about those issues, but they said this
9 is what it is, and, you know, it
10 depends on when and how they produced
11 the product and how it's shipped to the
12 United States.

13 And we brought up this subject
14 in Italy we went to meet with the CEO
15 and leaders. That cost us a lot of
16 money in sales.

17 THE ARBITRATOR: Dr. Hamad,
18 were any of these complaints in
19 writings?

20 THE WITNESS: Yes. We sent
21 couple of e-mails and also as a
22 conversation face-to-face with
23 the leader there.

24 THE ARBITRATOR: Okay.
25 Q. And I'm going to show you some

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 documents, Dr. Hamad, if we can take a
3 look at those.

4 MR. LEWIS: And I'll do a
5 better job of calling out the
6 exhibit numbers, Mr. Farber. I'm
7 going to pull up joint Exhibit
8 Number 15.

9 Q. Dr. Hamad, can you see my
10 screen?

11 A. Yes.

12 Q. Okay. Do you see this e-mail
13 dated 1/24/2012?

14 A. Yes.

15 Q. It's an e-mail string between
16 Ghanem, you're on here, Luca Spano,
17 etcetera; do you see that?

18 A. Yes.

19 Q. Are you familiar with this
20 e-mail string?

21 A. Yes. A little bit. Yes.

22 Q. You say "a little bit," you're
23 vaguely familiar but you're not
24 intimately familiar with this?

25 A. I'm -- I'm vaguely familiar. I

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 have to read it to be honest with you,
3 but I'm vaguely familiar with you.

4 Q. Take a moment. I'll scroll
5 slowly up.

6 A. Okay. Go ahead. Okay.

7 Q. Can you describe for Mr. Farber
8 based on your understanding what's
9 happening here?

10 A. There was discrepancy between
11 what's ordered and what's provided in
12 the store. We had difficult
13 identifying certain items, to be honest
14 with you. And you know, we felt that
15 those items either missed -- they were
16 missed and not delivered or at some
17 time they were delivered really late,
18 so this was the conversation at that
19 time and probably Ghanem would give a
20 much better answer when you ask him.

21 Q. I'm going to show joint
22 Exhibit 29. Dr. Hamad, can you see my
23 screen?

24 A. Now, yes.

25 Q. Okay. I want to just draw your

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 attention to -- did you send this
3 e-mail? Do you recall sending this
4 e-mail back in November of 2011?

5 A. Yes. Absolutely.

6 Q. Can you explain what's being
7 discussed in this e-mail?

8 A. This e-mail I sent to Luca to
9 explain to him that the store is really
10 not doing well, and sales are bad. So,
11 you know, also, we were different. We
12 opened the store. We were led to the
13 believe that there are a lot of
14 customers for Pal Zileri.

15 And when they had their old
16 store, which is -- I honestly didn't
17 know where it was, but again they had
18 their old store, they had customers
19 they provided names of those customers
20 and phone numbers.

21 So we asked our workers to call
22 those customers. And when they came to
23 the store, to our surprise, they were
24 asking for high discount, which is
25 unbelievable. And it came to our

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 attention that the old store was
3 actually -- that the discount --
4 sometimes they were asking for 70,
5 80 percent.

6 And it came to our attention
7 that the store they had was almost like
8 an outlet store or wholesale store. It
9 wasn't really representing Pal Zileri's
10 image. It was just doing pathetic in
11 the sense they were just sending
12 merchandise at a high discount price.

13 So when we opened our store, it
14 was a boutique, nice store, those
15 customers -- I would say 80,
16 90 percent, they refused to buy, and
17 they wanted a high discount, and that
18 also lead to really a bad start of the
19 store.

20 Q. Mr. Hamad, you're saying in this
21 e-mail that you open -- you open late
22 in the season, right, at least a month
23 and a half; do you see that?

24 A. Yes.

25 Q. Can you tell me why the store

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 opened later in the season?

3 A. We -- we had to obey by order,
4 rules, and regulations for Pal Zileri
5 for the store. There was no question
6 about how to do the interior design,
7 how to put the products, what kind of
8 cabinets you want, what kind of lights
9 you need to be, everything has to be
10 done in Italy.

11 They did the interior design in
12 Italy. They did the cabinets in Italy.
13 The lights from Italy, everything, the
14 carpets from Italy. So there were
15 delays in manufacturing those carpets
16 -- I mean those cabinets and certain
17 materials.

18 We were supposed to be open in
19 July first, and I think we didn't open
20 until September or early October. I
21 can't remember, but something like
22 this. We lost at because of their
23 retirement.

24 So you have to imagine, Honor,
25 that I opened in October, I put the

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 full merchandise, 500,000 of
3 merchandise in October. In December, I
4 received the order to put the
5 merchandise on sale, so we can get rid
6 of the product because they are going
7 to bring the next season in December,
8 January.

9 In three months, October,
10 November, December, we were able to
11 sell \$310,000. Now, you have to -- we
12 have to remember that they led us to
13 believe that sales -- the projected
14 sales a year is five million dollars.
15 So in three months, \$300,000, let's do
16 the math. That was a disaster.

17 Q. Dr. Hamad, you said that you
18 were -- let's go back to the original
19 part of the question, which was what
20 caused the store to open later than you
21 had originally intended? And you said
22 that there was some delays; can you be
23 specific about the delays?

24 MR. BROWN: I'm objecting to
25 this entire line of questioning,

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 Arbitrator Farber. This dates
3 back to September 2011.

4 THE ARBITRATOR: Hang on.

5 Mr. Lewis, what's the
6 relevance of this in terms of
7 what I have to decide?

8 MR. LEWIS: Well, I would
9 say, Mr. Farber, you did say you
10 would allow us some leeway in
11 terms of some testimony of the
12 causes of the store's demise and
13 the poor performance while the
14 store was being operated. And
15 certainly, I don't want to
16 belabor the point, and go beyond
17 what's necessary but I'm just
18 letting some of that --

19 MR. BROWN: I have answers
20 and, frankly, better arguments on
21 the other side, but it's -- it's
22 -- what's -- it's a mine hole. I
23 don't want to go down them. This
24 is 2011. They don't have timely
25 claims for actions or any actions

69 (Pages 270 to 273)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 as of 2011. This is so long ago.

3 THE ARBITRATOR: Mr. Lewis,
4 I think in light of my prior
5 ruling, I've heard enough on
6 these points. I do understand
7 the witness's frustration. I'm
8 sure you've explained to the
9 witness my ruling regarding
10 statute of limitations, which is
11 based upon the applicable law, so
12 let's move onto the next
13 question. The objection will be
14 sustained.

15 Are you starting a new area
16 now, Mr. Lewis?

17 MR. LEWIS: I think so.

18 THE ARBITRATOR: How much
19 more do you think you have with
20 the witness?

21 MR. LEWIS: Probably
22 30 minutes.

23 THE ARBITRATOR: Okay. So,
24 guys, why don't we take our
25 afternoon break at this point,

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 because we've been going over a
3 hour and a half? So I've got
4 3:35, let's return at 10 to 4:00,
5 and then really hopefully finish
6 off this witness and see if we
7 can start another witness.

8 Who is going to be your next
9 witness, Mr. Lewis?

10 MR. LEWIS: It depends right
11 now it's scheduled to be Ghanem.

12 THE ARBITRATOR: Say it
13 again. I didn't hear you.

14 MR. LEWIS: It's scheduled
15 to be Ghanem.

16 THE ARBITRATOR: Okay. All
17 right, guys. 15 minutes. Let's
18 come back at 3:50. Thank you,
19 everyone.

20 (Whereupon, a recess was
21 taken at this time.)

22 THE ARBITRATOR: All right.
23 Mr. Lewis, why don't you proceed.
24 You're on mute, Mr. Lewis.

25 Q. This came up in 2013, do you

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 recall having a conversation with
3 Forall about finding a new operator?
4 Dr. Hamad, can you hear me?

5 A. I'm sorry. Yes, I hear you. Do
6 you hear me?

7 Q. Yes.

8 A. All right. Thank you. Repeat
9 that question.

10 Q. In 2013, do you recall having a
11 conversation with Forall about finding
12 a new operator?

13 A. Yes, we did.

14 Q. Do you recall when that was?

15 A. It was February, March of 2013.

16 Q. And did Forall agree to help
17 find a new operator?

18 A. Yes, they did.

19 Q. And was that operator Alfonso
20 Entebi?

21 A. Yes, he is.

22 Q. And what was your understanding
23 about Mr. Entebi and the stores he
24 owned?

25 A. He is an experienced operator.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 He had stores in Mexico and some in
3 South America. One of them is Pal
4 Zileri and he was successful in, you
5 know, setting up, buying the products,
6 and operating the market.

7 Q. Okay. And so did you personally
8 meet with Mr. Entebi during the
9 negotiations about Italnord coming on
10 board?

11 A. Yes, I did.

12 Q. And do you recall having
13 conversations about what the
14 arrangement would be, what the
15 expectations were?

16 A. He is to come and completely
17 take over the store.

18 Q. Did you end up selling, "you," I
19 mean Sarah, end up selling any of your
20 merchandise to Mr. Entebi?

21 A. No.

22 Q. You said you did not sell the
23 merchandise to Mr. Entebi?

24 A. You mean when he took over?

25 Q. When he took over.

70 (Pages 274 to 277)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. No.

3 Q. Okay.

4 A. We didn't.

5 Q. There was -- let me ask. My
6 understanding was there was an asset
7 purchase agreement?

8 A. You mean assets not merchandise.
9 I'm sorry. He took over -- he bought
10 all the assets of the store, yes.

11 THE ARBITRATOR: You're
12 saying that did not included the
13 inventory, the merchandise.

14 THE WITNESS: He did not --
15 he -- he had -- he bought his
16 season five for us was his
17 season, Honor. So when they
18 showed that tables, the last one
19 was Mr. Entebi's buy. It wasn't
20 our buy.

21 Q. Let's make sure Mr. Farber is
22 clear on what you're testifying to, Dr.
23 Hamad. You're saying that the
24 spreadsheet in Exhibit 130 that
25 Mr. Brown showed to Mr. Luca Spano,

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 there was a purchase for 500 and some
3 odd dollars for 2013; explain your
4 testimony about who paid for that
5 merchandise?

6 A. That was the season we were
7 supposed to take over and sell, but
8 since he came over to run the store, so
9 it went under Alfonso. He did not buy.
10 So we only bought four seasons. We
11 only did four seasons; we didn't do
12 five seasons.

13 Q. However, just to be sure you're
14 saying that you all, "you all," being
15 Sarah, did not purchase 2.2 million
16 dollars worth of merchandise while you
17 were operating the store?

18 A. Absolutely not.

19 Q. We'll come back to that. For
20 now let's cut straight on your dealings
21 with Mr. Entebi. You had an asset
22 purchase agreement that you entered
23 into with Italnord, that did not
24 included the merchandise that you had
25 in the store; are we correct about

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 that?

3 A. Yes.

4 Q. What was included?

5 A. Everything inside the store,
6 computers, manikins, you know, tables,
7 rugs, everything, books, marketing
8 materials, all the way into the asset
9 purchasing agreement -- all the way
10 into the license purchasing agreement.
11 That was included in that document
12 [sic].

13 Q. We'll take a look at that. So
14 what did you do? What did Sarah do
15 with the merchandise if it wasn't
16 included in the asset purchase
17 agreement?

18 A. Honestly, it was -- it was sold
19 as a wholesale in the store. That day
20 he came in, our merchandise was packed
21 in the back of the store, and it was
22 sold at the whole sale, 15 cents and a
23 dollar. That was big blow for us
24 [sic].

25 Q. What did you sell the

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 merchandise for, let's just say,
3 whatever you could get? Why did you
4 make the decision to do that?

5 A. Otherwise, you know, we would
6 have thrown it away. We did not want
7 to damage the name of Pal Zileri by
8 just throwing it away, so we had to
9 sell it. And actually, Paolo -- not
10 Paolo -- Luca help us find the company
11 who bought the merchandise.

12 Q. Is it fair to say that you all
13 sold the merchandise as you did --
14 liquidated the merchandise to try to
15 mitigate your losses?

16 A. Absolutely.

17 Q. And so Luca was aware of the
18 gentleman who helped you do the
19 liquidation?

20 A. Yes, he did.

21 Q. All right.

22 MR. LEWIS: I'm going to
23 share my screen and bring up
24 joint Exhibit Number 6.

25 THE ARBITRATOR: Let me just

71 (Pages 278 to 281)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 go back. Dr. Hamad, did you say
3 that it was from the back of the
4 store sold for 50 cents on the
5 dollar or 15 cents on the dollar?

6 THE WITNESS: One, five.
7 And actually, honestly, when they
8 took over they packed our stuff
9 in a miserable way, but I don't
10 want to go into that now.

11 THE ARBITRATOR: Go ahead,
12 Mr. Lewis. Go ahead.

13 Q. Dr. Hamad, can you see my
14 screen?

15 A. Now I do.

16 Q. Do you recognize this document
17 that I have up?

18 A. Yes, I do.

19 Q. You see this is the asset
20 purchase agreement dated the 10th of
21 September 2013?

22 A. Yes, I do.

23 Q. And you entered this -- Sarah
24 entered into this agreement with
25 Italnord?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 A. Yes.

3 Q. Okay. You were trying to recall
4 what was included in the -- in the
5 actual statement of the assets, and do
6 you see --

7 A. Yes.

8 Q. -- fixtures, etcetera, do you
9 see that?

10 A. Yes.

11 Q. Do you see "intangible
12 property," do you see that?

13 A. Yes.

14 THE ARBITRATOR: Mr. Lewis,
15 I reviewed this yesterday. I
16 think the one you really want to
17 refer me to is 1.2, the extended
18 areas, particularly F.

19 MR. LEWIS: Well, let's go
20 there. I'll take your advice and
21 see if that is indeed what I'm
22 looking for. You said "S" or
23 "F"?

24 THE ARBITRATOR: 1.2 F is
25 the one I think we're talking

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 about.

3 MR. LEWIS: You're right
4 this does exclude the inventory.
5 There's another piece that I
6 think will be interesting to you,
7 Mr. Farber.

8 THE ARBITRATOR: All right.

9 MR. LEWIS: I appreciate
10 that though.

11 Q. It's the Subsection 2 here, and
12 I'm going to read this for you Dr.
13 Hamad, the pertinent portion of this,
14 essentially this is what is being
15 included in the sale and it's a license
16 to use during the term "All contracts
17 with seller utilizing the operation of
18 the business, which are exclusive to
19 sellers, which are assignable by seller
20 and accepted by purchaser. Including
21 but not limited to the seller's license
22 and retail operation agreement with
23 Forall USA"; do you see that?

24 A. Yes, I did, and that's what I
25 said.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 Q. So what was your understanding
3 of the effects of this provision?

4 A. That Alfonso or Italnord took
5 over the store completely and we stayed
6 only for the lease.

7 Q. Okay. And what is your
8 recollection as to why Sarah was
9 required to stay on the lease?

10 A. Two reasons: One, he didn't
11 have enough credit in the United
12 States. Alfonso, Italnord, he
13 requested to take over the lease as you
14 showed previous e-mail to Luca, but he
15 didn't have enough credit to go in
16 front of Simon and request the lease to
17 be transferred.

18 Q. Now, Simon actually weighed in
19 on whether they would allow Alfonso to
20 take over the lease, correct? Let me
21 ask that differently.

22 Simon actually gave a decision
23 as to whether or not they would allow
24 Alfonso to take over the lease,
25 correct?

72 (Pages 282 to 285)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 A. They requested us to stay on the
3 lease.

4 Q. So your understanding was that
5 through Alfonso coming on board,
6 Italnord coming on board to operate the
7 agreement, that Sarah was no longer
8 going to be obligating under its
9 obligation -- excuse me -- under its
10 obligations of the license agreement;
11 that was your understanding?

12 MR. BROWN: I'm going to
13 object. I mean, that's really
14 leading a direct witness.

15 MR. LEWIS: Overruled. You
16 can tell me what your
17 understanding was. You can
18 answer the question.

19 A. My understanding -- I'm not
20 liable whatsoever for the license
21 purchasing agreement. Italnord formed
22 the company and had different license
23 purchasing agreement with Forall. Our
24 license purchasing agreement was never
25 enforced, was never enforced by

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 anybody.

3 My understanding that he took --
4 he bought the license purchasing
5 agreement. He formed his own new
6 license purchasing agreement, and I am
7 only staying because of the lease -- he
8 doesn't have enough credit to go in
9 front of Simon.

10 THE ARBITRATOR: So can you
11 just show me or Mr. Lewis, you
12 can show me which paragraph says
13 that in this agreement.

14 MR. LEWIS: Mr. Farber,
15 you're saying which paragraph
16 supports Dr. Hamad's
17 understanding?

18 THE ARBITRATOR: Okay. I'll
19 take it that way.

20 MR. LEWIS: Okay. I believe
21 it's the one we just read.

22 MR. BROWN: Which is what
23 number?

24 MR. LEWIS: I can re-share
25 it if that was helpful.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 THE ARBITRATOR: 1.1 B
3 little 2 he's referring me to,
4 right?

5 MR. LEWIS: Correct. Are we
6 there? Okay.

7 THE ARBITRATOR: Just one
8 second. Just one moment. So Mr.
9 Lewis, I'll take it from you
10 since it's a legal document, just
11 tell me which language in little
12 two says that Sarah no longer has
13 any liability?

14 MR. LEWIS: I'm not saying
15 that that exact language is
16 present, Mr. Farber. What I'm
17 saying is the combination of
18 Sarah of selling all of its
19 assets to Italnord and Mr. -- Dr.
20 Hamad's understanding of this
21 provision in the asset purchase
22 agreement gave him the
23 understanding at the time.

24 And I have follow-up
25 questions for with -- with Dr.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Hamad now, but at the time he
3 thought that Sarah was moving on.
4 That Sarah was off the hook.

5 THE ARBITRATOR: Dr. Hamad,
6 in 2013, this asset purchase
7 agreement between Sarah and
8 Italnord did -- you had a lawyer
9 representing Sarah, did you not?

10 THE WITNESS: Yes, I did.

11 THE ARBITRATOR: Who was the
12 lawyer?

13 THE WITNESS: It was -- it
14 was a different lawyer. Lee
15 Levin.

16 THE ARBITRATOR: Okay.

17 THE WITNESS: L-E-V-I-N.

18 THE ARBITRATOR: Okay. And
19 Mr. Levin reviewed this asset
20 purchase agreement, right?

21 THE WITNESS: Absolutely.

22 THE ARBITRATOR: Okay.

23 THE WITNESS: And Italnord's
24 lawyer reviewed it also.

25 THE ARBITRATOR: Okay. All

73 (Pages 286 to 289)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 right. Go ahead, Mr. Lewis.

3 Q. So Dr. Hamad you understand that
4 there are contradictory provisions in
5 here as well, right, and you understand
6 there's contradictory language in the
7 management agreement that you entered
8 into with Italnord?

9 A. Yes, I did.

10 Q. So you understand there's
11 language, which I'm sure Mr. Brown is
12 going to be anxious to show you that
13 says something to the opposite of what
14 your understanding was that Sarah was
15 going to no longer be obligated under
16 the license agreement; you understand
17 that, right?

18 A. Yes, I do.

19 Q. It came a time --

20 THE ARBITRATOR: Are you
21 leaving the license agreement
22 now, Mr. Lewis?

23 MR. LEWIS: I am.

24 THE ARBITRATOR: Not the
25 license agreement, but really the

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 agreement between Sarah and
3 Italnord. Okay. Then let me
4 just ask this: So I just -- I'm
5 not understanding this point.
6 When you entered in negotiations
7 with Entebi, did you discuss with
8 him this minimum purchase
9 requirement of \$900,000 and your
10 meeting in Italy in September of
11 2012?

12 THE WITNESS: We provided
13 him with the lease agreement and
14 with the license purchasing
15 agreement. He took a look at
16 both of them.

17 THE ARBITRATOR: But I
18 didn't ask that. What I asked
19 was: Did you discuss with him
20 the meeting that you had in 2012
21 regarding the minimum purchase
22 requirement?

23 THE WITNESS: I think we
24 did, but I don't recall, to be
25 honest with you. I think we did.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 THE ARBITRATOR: So why --

3 THE WITNESS: He's -- he --
4 I'm sorry. He was aware of it.

5 THE ARBITRATOR: Okay. So
6 was there anything put into the
7 agreement with Italnord that
8 dealt with the minimum purchase
9 requirement or the change that
10 you said you thought took place
11 in September '12 as a result of
12 that meeting in Italy?

13 THE WITNESS: My
14 understanding that -- Luca
15 testified to that -- that our
16 license purchasing agreement is
17 -- is over, and he is forming his
18 new license purchasing agreement.

19 So the \$900,000 was -- it
20 didn't mean anything at that
21 moment for him because he was
22 forming his own new licensing
23 purchasing agreement with Forall.

24 THE ARBITRATOR: Okay. Go
25 ahead, Mr. Lewis.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. Dr. Hamad, it came a time when
3 Italnord decided it did not want to
4 move forward operating the store any
5 longer, right?

6 A. Yes.

7 Q. And what are the reasons that
8 were given to you that they were making
9 that decision?

10 A. Very poor performance of the
11 store.

12 Q. And can you quantify that? Are
13 you familiar with what their sales
14 were?

15 A. From my understanding in talking
16 to him, a certain month it was still
17 less than 100,000 in certain months,
18 more than 100,000.

19 Q. Do you recall what the rent was
20 in that location in the Forum malls in
21 2013?

22 A. Close to \$70,000.

23 Q. Do you recall what your overhead
24 was in terms of salaries when you were
25 operating the store in 2012?

74 (Pages 290 to 293)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Close to \$40,000. 35, 40 -- 30
3 to 40 a month.

4 Q. Do you recall what your overhead
5 was in terms of utilities and other
6 expenses while you were operating the
7 store in 2012?

8 A. I don't recall, but probably
9 everything 10 to \$15,000 or more.

10 Q. We'll, take a look at the
11 document. I just want to understand
12 the recollection that you had.

13 So when Mr. Entebi said he
14 wasn't going to continue on with the
15 store, what position did that put Sarah
16 in?

17 A. An awkward position, because we
18 are liable for the lease in front of
19 the mall.

20 Q. And so what were you forced to
21 do?

22 A. He sent couple of e-mails after
23 discussing with Pal Zileri that he
24 wants Simon to take over the store or
25 find a new tenant [sic].

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. Did you help facilitate that?

3 A. I initially, you know, talked to
4 them, but later on, yes, we did open
5 his request.

6 Q. And what did you do to help
7 facilitate his request?

8 A. We talked to Simon to see if
9 they have a new tenant.

10 Q. Did you end up entering into an
11 agreement with Simon about finding a
12 new tenant?

13 A. Yes, I did.

14 Q. And was that the letter
15 agreement you entered into in October
16 of 2014?

17 A. Yes, I did. I mean, if you show
18 it to me, I know what it is.

19 Q. Dr. Hamad, can you see my
20 screen, the document on my screen?

21 A. Yes.

22 Q. Is this the letter agreement
23 that we were referring to between Simon
24 and Sarah?

25 A. I think so, yes.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. It's dated October 23, 2014.

3 A. Yes.

4 THE ARBITRATOR: What
5 exhibit number is this,
6 Counselor?

7 MR. LEWIS: This is -- I
8 believe this is 325, and I'll ask
9 Mr. Shah if he can confirm that
10 for me.

11 MR. SHAH: That's correct.

12 MR. BROWN: The Bates label
13 on that, if you have it?

14 MR. LEWIS: Sohil, if you
15 don't mind.

16 MR. SHAH: It's Claimant
17 2168.

18 MR. BROWN: Thank you.

19 Q. Okay. Dr. Hamad, have you had
20 the opportunity to read at least the
21 portion of the document that's on the
22 screen?

23 A. Quickly, yes.

24 Q. I'm going to ask you to look to
25 the second and third paragraph, "Tenant

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 currently occupies the premises under
3 lease dated May 18, 2011. It is
4 landlord's understanding that tenant
5 now desires to close the premises for
6 business and surrender tenant's lease
7 hold to landlord therefore, tenant
8 wishes to authorize landlord to begin a
9 search for a suitable replacement
10 tenant for the premises"; do you see
11 that?

12 A. Yes, I do.

13 Q. And in the next paragraph we see
14 that the language is: "Please be
15 advised that landlord is willing to
16 commence using its reasonable efforts
17 to find a replacement tenant to the
18 premises on terms and conditions
19 acceptable solely to landlord"; do you
20 see that?

21 A. Yes, I do.

22 Q. So within this agreement, you
23 were asking Simon to try to help find a
24 new tenant given Alfonso's eminent
25 departure from the store; is that

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 right?

3 A. Absolutely.

4 Q. Did you end up having a
5 conversation with Forall about this
6 agreement? I'll leave it there. Did
7 you have a conversation with Forall
8 about this agreement?

9 A. Yes, I did.

10 Q. And do you recall what Forall
11 asked you to do?

12 A. I -- the conversation I had with
13 Paolo and Paolo and Luca did not object
14 to finding a new tenant. And as a
15 matter of fact, Paolo sent me an e-mail
16 stating that he's willing to assist
17 finding a new tenant, and he had some
18 conditions for that tenant to take over
19 the store.

20 Q. So Forall agreed to join in in
21 trying to find a new tenant for the
22 store?

23 A. Absolutely.

24 Q. I don't know if you were present
25 during Mr. Brown's opening statements.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 You were on the Zoom call then.

3 A. Yes, I was.

4 Q. And do you remember Mr. Brown
5 saying that his understanding was
6 Forall, I believe, hit the roof, when
7 they found out that Simon was looking
8 to find a new tenant based on this
9 agreement; do you recall that?

10 A. Absolutely.

11 Q. Is that your recollection? Do
12 you remember it that way?

13 A. No. Absolutely not. Though
14 they sent a letter later on, but
15 absolutely not. They sent an e-mail.

16 Q. So between the execution of this
17 agreement in October of 2014, until
18 Alfonso left the store, did Forall
19 change its mind about finding a new
20 tenant?

21 A. They reproached me and said,
22 "Good news. Forall, is willing to take
23 the store."

24 Q. Now, was that something that you
25 had suggested or did Forall come up

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 with that idea and share it with you?

3 A. Forall came up with the idea,
4 and we were good citizens. We tried to
5 assist them in doing that.

6 Q. So when Forall came up with the
7 ideas that they would take over the
8 store instead of working with Simon and
9 finding a new tenant, did that require
10 you all to approach Simon about the
11 letter agreement?

12 A. Yes. I did and I remember that
13 time extremely well.

14 Q. All right. Well, tell Mr.
15 Farber about that time. What was that
16 process like to deal with the letter
17 agreement?

18 A. So we had to -- I had my lawyer
19 talk with them almost constantly on a
20 daily base to really retrieve the
21 letter and bring the lease back in full
22 -- full speed whatever it is, you know,
23 in all conditions.

24 Q. When you say "retrieve," you
25 mean rescind?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Rescind, yes.

3 Q. And so were you ultimately
4 successful in getting that letter
5 agreement rescinded?

6 A. Yes, I did.

7 Q. Were there -- was there any
8 damage done to the Simon relationship
9 as far as you recall?

10 A. There were -- there were some
11 damage, but the main one was they were
12 very nervous about the performance of
13 that store and that the store will be
14 closed at any given moment.

15 Q. Now, how would Simon know about
16 the performance of the store?

17 A. They have the daily sales, the
18 monthly sales, and everything. They
19 know about it.

20 Q. All right. Is it your testimony
21 that the operators of the store were
22 required to report their sales to
23 Simon?

24 A. Yes.

25 Q. Did you, Sarah, have to do that

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 when you were operating the store?

3 A. Absolutely.

4 Q. Did you review the sales figures
5 when those were presented to Simon?

6 A. Yes.

7 Q. And so you know that that was a
8 consistent process of reporting sales
9 to Simon?

10 A. They looked at our sales during
11 operation, they look at Italnord's
12 sales during his operation, and they
13 looked at Forall's sales during their
14 operations.

15 They have the numbers and they
16 know what's going on in the store in
17 terms of stay.

18 Q. So Italnord had to report its
19 sales to Simon just as you had to?

20 A. Absolutely.

21 Q. So we're going to come back to
22 the sales. I want you to continue
23 speaking about Simons attitude toward
24 Forall coming on board.

25 A. They really were not big fans of

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 Forall coming back and operating in the
3 store, to be honest with you, because
4 of the poor -- because of the poor
5 performance of the product in the mall.

6 You know, Pal Zileri product is
7 good, but it wasn't sellable in the
8 mall. It was not. You know, talking
9 about being in -- in the mall, imagine
10 yourself, you're next to H&M, you know,
11 you talk about Pal Zileri with the high
12 quality next to H&M, next to other
13 stores selling jeans, and low quality
14 materials.

15 Q. Well, since you mentioned that,
16 Dr. Hamad, and I don't want us to lose
17 our place here, but since you're saying
18 that, are you saying that at that time
19 in 2013, the location that the Pal
20 Zileri store was in was not around high
21 -- high end retailers?

22 A. Absolutely not. And as a matter
23 of fact, Pal Zileri customers would
24 come to the store because they see the
25 name, walk in customers in the mall, or

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 customers just looking to buy \$10
3 shorts and so forth.

4 Q. So you heard testimony or you
5 heard our opening statements about
6 Simon approaching Forall to move the
7 store to a smaller location with a
8 reduction in rent; do you recall that?

9 A. Absolutely. And we were part of
10 that conversation.

11 Q. Okay. So what do you recall
12 about that as being part of that
13 conversation?

14 A. Simon looked at the sales of the
15 store, and they realized that the store
16 was selling at approximately \$63,000
17 average a month.

18 And Honor, I want you to
19 understand, when we were running the
20 store, our average sale was close to
21 \$155,000 a month. So there is no way
22 Pal Zileri will say we didn't perform.
23 We outperformed Forall, itself, by
24 ourselves.

25 However, you know, Alfonso

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 dropped the sales down to 110, \$113,000
3 a month, and then Forall sales were
4 close to \$63,000 or \$65,000 a month.
5 That made Simon panic. They knew the
6 store is going to close. There was no
7 way for the store to survive.

8 So they sent an e-mail in June
9 or July saying, "If you guys need
10 assistance, we'll be more than happy to
11 assist you by finding a new location
12 and then the decreasing the rent and so
13 forth."

14 Q. And are you -- do you know
15 whether or not -- well, we're here
16 today, but do you recall whether Forall
17 took advantage of that opportunity?

18 A. We put that two together. We
19 give the permission -- Forall asked our
20 lawyer to give the permission to talk
21 to them, and we did not hesitate a
22 minute. We wanted to find a solution
23 for everybody to be successful. So we
24 went ahead and give them permission to
25 talk to Simon.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. Dr. Hamad, I'm trying to ask a
3 different question. Do you know
4 whether or not Forall accepted or
5 rejected Simon's offer to move to
6 another location?

7 A. As far as I know, they did not
8 act on it. So they did not -- I have
9 to assume they rejected it.

10 Q. And you heard in Mr. Brown's
11 opening statement that you felt that --
12 Forall felt that the location that was
13 being offered wasn't as desirable to
14 the location where they were; do you
15 agree with that?

16 A. I totally disagree.

17 Q. Okay. Let's go back to -- let's
18 go back to -- after you had spoken with
19 Simon and they rescinded the letter
20 agreement, did you enter into
21 negotiations with Forall on a document
22 that would govern Forall operating the
23 store?

24 A. Yes, we did.

25 Q. And was that a management

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 agreement? Did you all negotiate a
3 management agreement?

4 A. Yes, I did.

5 Q. In advance of that, do you
6 recall e-mails being sent about certain
7 provisions that you all wanted to see
8 in the management agreement?

9 A. Yes, I did.

10 Q. Okay.

11 MR. LEWIS: I'm going to
12 show what's been marked as -- I'm
13 going to show joint Exhibit 251.

14 Q. This particular document I'm
15 going to show you, Dr. Hamad, speaks to
16 what you just testified about the --
17 can you see this document, Dr. Hamad?

18 A. Yes, I do.

19 Q. Starting at the bottom here, you
20 see that this is an e-mail dated
21 January 9, 2015; do you see that?

22 A. Yes, I do.

23 Q. Okay. And who is David Hochman?

24 A. He is our lawyer.

25 Q. And who was Mr. Steen?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. He is the -- responsible for the
3 Caesar's Mall from Simon.

4 Q. And so and his name is John?

5 THE ARBITRATOR: I thought
6 you said your lawyer was Levy,
7 Lev or something like that.

8 THE WITNESS: That's his
9 partner.

10 Q. So I'm going to read this really
11 quickly. "John, thank you for speaking
12 with Dr. Hamad and me. I want to
13 confirm what Sarah LLC is requesting.
14 In lieu of your proposal, you're asking
15 that Simon suspend its efforts to
16 obtain a replacement tenant until
17 January 31st, 2016. There will not be
18 a sales target, which will need to be
19 met during this proceed. Sarah will
20 assess the sales performance of the
21 store, and if the sales do not improve
22 during the 12-month period, Sarah will
23 then notify Simon to resume its search
24 for a replacement tenant"; do you see
25 that?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Yes, I do.

3 Q. Is this consistent with the
4 discussions you all were having with
5 Simon at the time?

6 A. Absolutely.

7 Q. So I want to really focus in
8 hear on "Sarah will assess the sales
9 performance of the store. If sales do
10 not improve during the 12-month period,
11 Sarah will then notify Simon to resume
12 its search for a replacement tenant";
13 did you understand this to be Simon
14 giving the store, like, another chance?

15 A. We had to beg them to give the
16 store another chance, to be honest with
17 you. I had so many conversations with
18 John Steen to really let Forall take
19 over the store again. They knew the
20 store wasn't going to perform.

21 Q. Dr. Hamad, did you understand
22 this to be Simon giving the store a
23 final chance?

24 A. Absolutely.

25 THE ARBITRATOR: What was

78 (Pages 306 to 309)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 meant by the word "there will not
3 be a sales target"?

4 THE WITNESS: Honor, they
5 requested almost 200 to 250
6 percent increase in sales. They
7 realized if we don't do, that the
8 store is not going to be
9 performing and it has to close.

10 So you could imagine
11 \$63,000, You need more than 200,
12 225,000 for the store to survive.
13 They were selling at 63,000.
14 That was just unbelievable. So
15 the requested target we refused
16 because we didn't know if we were
17 going to achieve that target.

18 Q. But they were going to impose
19 that target on whomever operated the
20 store?

21 A. Absolutely.

22 Q. And so there's clearly some
23 parameters around Simon giving the
24 store this one more chance, right?

25 A. Absolutely.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. And then it's coming up, it
3 looks like Mr. Steen agrees that Simon
4 will not lease the space in 2015,
5 right?

6 A. Absolute.

7 Q. And that's pursuant to your
8 request so that Forall could operate
9 the store, right?

10 A. Yes. We pled a good citizen
11 with Forall so they can have another
12 chance to operate the store and
13 supposedly make it successful.

14 Q. Okay. Now, this is important,
15 and the top of this e-mail Mr. Brown is
16 copied, Forall's counsel today, right?

17 A. Yes.

18 Q. And here it says, your attorney
19 to Mr. Brown, that "The goal was to
20 coordinate with the letter of intent.
21 Our thought is that if Forall decides
22 that it wants to continue the
23 management arrangement beyond 18
24 months, and advises Sarah of this by
25 December of 2015, Sarah would then

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 revoke this letter agreement with
3 Simon. If things do not improve to a
4 level that Forall wants to continue the
5 management arrangement, Simon would
6 then recommit to looking for a
7 replacement tenant, which generally
8 takes six months or more"; do you see
9 that?

10 A. Absolutely. And that was the
11 request from Simon. They needed six
12 months to find a new tenant.

13 Q. So the six-month period -- the
14 six-month notice period made its way
15 into the management agreement; isn't
16 that correct?

17 A. Yes.

18 Q. And you recall during my opening
19 statement we went through e-mails where
20 you are writing in the e-mail to Forall
21 where you needed the six-month notice
22 period so that Simon could find
23 replacement tenant; do you recall that?

24 A. Absolutely.

25 Q. Is there any doubt in your mind

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 that Forall was aware that this was a
3 one last chance to operate the store,
4 and that they were supposed to give you
5 six months notice if they weren't going
6 to continue on so that the store could
7 be turned back over to Simon?

8 MR. BROWN: Objection.

9 Legal summary in closing, but
10 that's not a question for this --

11 THE ARBITRATOR: Overruled.

12 I'll take it as his lay
13 understanding, not as a legal
14 conclusion.

15 You can answer the question,
16 sir.

17 A. I had no doubt in my mind that
18 Paolo Torello, the CEO of North America
19 knew that this is the last chance of
20 the store to be operated. Otherwise,
21 if they fail, the store has to be
22 closed. I had no doubt whatsoever,
23 Honor.

24 Q. But specifically about the
25 six-month notice --

79 (Pages 310 to 313)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Yes.

3 Q. What --

4 A. So I asked them specifically in
5 the e-mail that he needs to give us six
6 months, so we have enough time for
7 Simon to find a new tenant. So he
8 should tell us six months before the
9 end of the 18 months if he's going to
10 continue to operate or not.

11 MR. LEWIS: I'm going to
12 show Joint Exhibit 8.

13 Q. Dr. Hamad, can you see my
14 screen?

15 A. Yes, I do.

16 Q. Is this the management agreement
17 between Forall and Sarah dated --

18 A. Yes.

19 Q. I'm going to draw your attention
20 to Section 2.1. Okay. And for the
21 sake of time I'll go ahead and read it
22 quickly, "Forall shall assume exclusive
23 management of and control of the
24 business effective no later than
25 March 15th, 2015, start date, for a

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 term of 18 months. Forall shall, at
3 its own discretion, on or before
4 March 1, 2016, whether it intends to
5 take over the lease and business,
6 and/or otherwise terminate the
7 management agreement at the end of the
8 initial term"; do you see that?

9 A. Yes.

10 Q. Is this the six-month notice
11 period making its way into the
12 management agreement?

13 A. Absolutely.

14 Q. So, Dr. Hamad, when Forall did,
15 in fact, take over after this was
16 executed and Forall took over, you've
17 testified to it a bit, but what was
18 your understanding of how -- did the
19 performance improve as Simon was
20 requiring?

21 A. I -- I think they did the worse
22 of all three operators.

23 Q. And was Forall required to
24 provide its sales figures to Simon on a
25 regular basis as well?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Absolutely.

3 Q. Now, you testified also that you
4 had agreed for Simon and Forall to be
5 able to speak directly about
6 renegotiating the lease; is that
7 correct?

8 A. Absolutely.

9 Q. Okay. And so once you had given
10 that consent to Forall to renegotiate
11 the lease with Simon, do you know if
12 those discussions took place?

13 A. They did. I'm sorry. Say that
14 again what time, 2016?

15 Q. Yes.

16 A. They did not. Okay.

17 Q. Well, you testified that
18 discussions did take place; when are
19 you aware that discussion did take
20 place?

21 A. I'm -- ask that question again.
22 I apologize to you.

23 Q. You gave permission for Forall
24 to speak directly with Simon about
25 renegotiating the lease, correct?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Yes, I did.

3 Q. And I'm asking you if you knew
4 if those discussions took place?

5 A. I think -- again, I'm not sure,
6 but I think they did.

7 Q. Okay. Do you know what Simon
8 decided?

9 A. Simon decided that they do not
10 want Forall in the mall anymore. They
11 wanted Pal Zileri out.

12 Q. And they communicated that to
13 you, Simon did?

14 A. Yes, they did.

15 Q. Do you recall -- and I apologize
16 to jump around just a little bit. Do
17 you recall whether Forall was ever late
18 paying the rent?

19 A. Yes, they did.

20 MR. LEWIS: I'm going to
21 show joint Exhibit 50.

22 THE ARBITRATOR: 50?

23 MR. LEWIS: Yes.

24 Q. Dr. Hamad, can you see my
25 screen?

80 (Pages 314 to 317)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. Yes, I do.

3 Q. Is this a Simon account?

4 A. Yes, it is. Actually, this is a
5 6/1/2016.

6 Q. And who was operating the store
7 at this point?

8 A. I think it's Simon. I mean
9 Forall.

10 Q. And does this show an amount
11 past due?

12 A. That's what it shows, yes.

13 Q. And total outstanding amount of
14 139,252.52, and you testified earlier
15 that rent was approximately 70 thousand
16 a month, that's correct?

17 A. Exactly. That's what I said.

18 MR. BROWN: Could you scroll
19 up to see the top of this,
20 please. So the statement date
21 6/16, got it. Thanks.

22 Q. And so -- is it safe to
23 ascertain from the outstanding balance
24 being \$139,000 that they were one month
25 behind?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. That's what the document shows.

3 Q. Do you recall having
4 conversations with Simon about Simon's
5 frustration with rent being paid late?

6 A. Simon sent two or three e-mails
7 to us saying that rents are late, you
8 know, and they're frustrated with that.

9 Q. So we've got mounting
10 frustration from Simon; that's safe to
11 say?

12 A. Absolutely. On top of poor
13 performance of sales.

14 Q. All right.

15 MR. LEWIS: I'm going to
16 show joint Exhibit 55.

17 Q. Dr. Hamad, can you see my
18 screen?

19 A. Yes, I do.

20 Q. You see this is an e-mail dated
21 February 13, 2016?

22 A. Yes, I do.

23 Q. Who is T Eads?

24 A. It was Todd Eads. He was in
25 charge of the Cecar Palace Mall from

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 Simon.

3 Q. I'm going to read this for the
4 record, "Hi, Dr. Hamad. We do not plan
5 to transfer the plan to Pal Zileri
6 corporate. It does not appear the
7 lease allows the assignment to
8 cooperate [sic]" --

9 THE ARBITRATOR: Not "to
10 cooperate," to corporate.

11 Q. I apologize. "Please sign the
12 paperwork and return it and we will
13 earnestly begin finding a replacement";
14 do you see that?

15 A. Yes, I did.

16 Q. So Simon is making a decision in
17 February 2016, that it will not allow
18 the Pal Zileri brand to go forward,
19 correct?

20 A. Absolutely.

21 Q. So there's been discussion about
22 Sarah, let's say, acting in concert
23 with Simon to relinquish the lease. We
24 just seen February 2016 Simon is making
25 the decision that it won't allow Simon

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 -- excuse me -- it won't allow Forall
3 to go forward on the lease.

4 Let's talk about what happened
5 in March of 2016. You recall that that
6 was the month Forall was supposed to
7 provide the six-month notice to Sarah
8 whether it intended to go forward
9 operating the store?

10 A. Yes.

11 Q. Now, there is evidence that
12 Forall asked for an extension; do you
13 recall that?

14 A. Yes, I do.

15 Q. Do you know if you granted
16 Forall an extension to continue
17 thinking about whether or not it wanted
18 to operate the store after --

19 A. I do not recall.

20 Q. But you do recall them asking
21 for an extension, correct?

22 A. Yes.

23 THE ARBITRATOR: When they
24 asked for the extension, did you
25 respond?

81 (Pages 318 to 321)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 THE WITNESS: I don't recall

3 responding Honor, but --

4 Q. Let me --

5 A. Go ahead.

6 Q. Let's be clear, though, Simon
7 had already told your company that they
8 weren't going to go forward with Simon
9 [sic] on the lease, they were done with
10 the brand you had already been told
11 that, correct?

12 A. Absolutely.

13 Q. So did you hear from Forall in
14 March of 2016 --

15 A. Can I make one more comment?

16 THE ARBITRATOR: No. Just
17 answer your lawyer's questions.

18 THE WITNESS: Okay.

19 Q. Did you hear from Forall in
20 March of 2016? Did Forall give you a
21 decision whether or not it intended to
22 go forward after the initial term in
23 March 2016?

24 A. Yes, they did.

25 Q. And what was their decision?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. They did not want to take over
3 the lease and operate the store.

4 Q. And so what did you do after
5 learning that Forall would not continue
6 operating the store after the initial
7 term expired?

8 A. We talked to Simon about finding
9 a new tenant.

10 Q. And there's -- Mr. Brown spoke
11 in his opening statement about Sarah
12 entering into an agreement with Simon
13 in June of 2016 to relinquish the
14 lease; is that true?

15 A. Yes.

16 Q. And do you recall when you
17 informed Forall that Simon had found a
18 new tenant?

19 A. The first part of July. We give
20 them a month notice [sic].

21 Q. And do you recall when Simon
22 informed you that they had found a new
23 tenant?

24 A. I think that June. I don't
25 remember the date or maybe early July.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 I don't remember the date.

3 MR. LEWIS: Okay. Mr.
4 Farber, if I may -- may I ask for
5 a very short five-minute break?

6 THE ARBITRATOR: Yes, of
7 course. Are you coming near a
8 wrap, Mr. Lewis?

9 MR. LEWIS: I may be.

10 THE ARBITRATOR: Sure.
11 Let's take five everyone. All
12 right.

13 (Whereupon, a recess was
14 taken at this time.)

15 THE ARBITRATOR: Okay.
16 Anything further, Mr. Lewis?

17 MR. LEWIS: I'm going try to
18 be as brief as possible.

19 THE ARBITRATOR: Go ahead.

20 MR. LEWIS: I'm going to

21 show joint Exhibit 25.

22 Q. Can you see my screen?

23 A. Yes, I do.

24 Q. You see this is March 9, 2016?

25 A. Yes, I do.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 Q. For our purposes, we'll just
3 look at the first paragraph first, "By
4 letter dated February 25, 2016, Forall
5 has notified Sarah that Forall will not
6 be extending the terms of the party's
7 management agreement dated February 9,
8 2015," do you see that?

9 A. Yes.

10 Q. Now, you do see there's language
11 here reminding you about the license
12 agreement, etcetera, the \$900,000
13 calendar year, you see that this is
14 included in this letter, right?

15 A. Yes.

16 Q. But as you testified earlier,
17 Simon had already made a decision that
18 the Pal Zileri brand was not going to
19 go forward in that space?

20 A. Absolutely.

21 Q. So could you have come back in
22 and operated the store at this point?

23 A. You know, I'm going to give you
24 an example --

25 Q. Dr. Hamad --

82 (Pages 322 to 325)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD

2 A. No. Absolutely not. The
3 biggest insanity is to keep doing the
4 things same things over and over and
5 expecting a different result.

6 Absolutely not.

7 Q. Dr. Hamad, I'm asking you just
8 very specifically about after Simon's
9 decision to -- that the brand was not
10 going forward, could you have possibly
11 come back in and run the store after
12 March 6, 2016?

13 A. No.

14 MR. LEWIS: I'm going to
15 show Joint Exhibit 49. This is
16 just to clean up some earlier
17 testimony.

18 Q. You said that there was an
19 e-mail about Simon being upset about
20 rent being paid late, right?

21 A. Yes.

22 Q. Okay. And this is an e-mail
23 from you to Paolo, CEO of Forall USA,
24 in June 2016. You say, "This is the
25 statement for the month of July. Simon

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 is getting upset about the delay of
3 payment, so please make sure that is
4 paid promptly by the First of July"; do
5 you see that?

6 A. Yes.

7 Q. Is this what you were talking
8 about Simon's frustration about rent
9 being paid late?

10 A. Yes.

11 MR. BROWN: That was
12 Exhibit 49?

13 MR. LEWIS: 49. And I'm
14 going to show 48.

15 MR. BROWN: Can you put that
16 back up for a second? The date
17 of that was what?

18 MR. LEWIS: Exhibit 49.

19 MR. BROWN: I'll go back to
20 it.

21 Q. Can you see this document?

22 A. Yes, I do.

23 Q. In July 6, 2016, this is a
24 letter to Forall's counsel, Mr. Brown,
25 from your attorney David Hochman; do

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 you see that?

3 A. Yes.

4 Q. And it reads, "On behalf of our
5 client, Sarah LLC, I'm writing to
6 advise you that the property found a
7 new tenant for Sarah's space at the
8 Forum shops. Existing lease will be
9 canceled effective at the closing of
10 business on July 31, 2016. New
11 tenant's lease will begin August 1,
12 2016. Informing Forall to arrange to
13 vacate business by July 31, 2016, at
14 that time the store will be closed
15 permanently"; do you see that?

16 A. Yes.

17 Q. Now, did Forall vacate the
18 premises by July 31, 2016?

19 A. No.

20 Q. And what did Simon do as a
21 result?

22 A. They filed a lawsuit to evict
23 them from the store.

24 Q. Who did they name of the
25 lawsuit?

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 A. I'm sorry?

3 Q. Who did they name in the
4 lawsuit?

5 A. Sarah LLC.

6 Q. Why was Sarah the named
7 defendant?

8 A. Because we were on the lease.

9 Q. Did Sarah have to pay anything
10 as a result of that lawsuit?

11 A. Paid lawyer fees close to
12 \$40,000.

13 Q. Is that part of the damages that
14 you're seeking in this arbitration?

15 A. Yes, I do.

16 Q. So when the store finally closed
17 in August of 2016, you heard from Sarah
18 prior to that, from Forall prior to
19 that, but when the store finally closed
20 in August of 2016, did you hear from
21 Forall after that? Let me be very
22 specific, did you hear from --

23 THE ARBITRATOR: Mr. Lewis,
24 I'm getting some feedback. I
25 don't know if others can hear it

83 (Pages 326 to 329)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
 2 as well. It's like a -- let's
 3 start again.
 4 MR. LEWIS: Sure.
 5 THE ARBITRATOR: Same thing
 6 so it must be on your end. It's
 7 on your end because I'm hearing
 8 it again now. Now you're on
 9 mute.
 10 MR. LEWIS: Did it go away
 11 when I muted? So it's probably
 12 -- I can resolve that by coming
 13 out of the meeting and coming
 14 back in. I'll try to do that as
 15 quickly as possible.
 16 THE ARBITRATOR: All right.
 17 Go ahead.
 18 (Whereupon, a recess was
 19 taken at this time.)
 20 MR. LEWIS: Is that better?
 21 THE ARBITRATOR: No.
 22 MR. BROWN: Can you use the
 23 phone option? Do you want me to
 24 ask him your questions?
 25 MR. LEWIS: I appreciate

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
 2 that.
 3 THE ARBITRATOR: Mr. Brown,
 4 that was a good one.
 5 MR. LEWIS: Is that any
 6 better?
 7 THE ARBITRATOR: Yes.
 8 Q. So, Dr. Hamad, I was asking you
 9 if after the store closed in October of
 10 2016, you heard from Forall?
 11 A. No.
 12 Q. What did you think had happened?
 13 A. I think they locked away.
 14 Q. Is that what you all had done?
 15 You thought everyone had gone their
 16 separate ways?
 17 A. The store performed poorly,
 18 closed, and everybody walked away.
 19 Q. And wasn't that consistent with
 20 what the agreement was on the six-month
 21 notice that the store would be turned
 22 back in to Simon?
 23 A. Absolutely.
 24 Q. Now, it came a time that you did
 25 hear from Forall, again, at some point,

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
 2 right?
 3 A. Yes.
 4 Q. And when was that?
 5 A. In November 2017.
 6 Q. And was that when you received
 7 the demand letter?
 8 A. Yes.
 9 MR. LEWIS: Showing Joint
 10 Exhibit 62.
 11 Q. Dr. Hamad, can you see my
 12 screen?
 13 A. Yes, I do.
 14 Q. Now, you see this is a letter to
 15 David Hochman from Stephen Brown; do
 16 you see that?
 17 A. Yes, I did.
 18 Q. Do you see the big bold letters
 19 right here, "Prepared in anticipation
 20 of litigation"?
 21 A. Yes, I do.
 22 Q. And so this was the first time
 23 you heard from Forall since August of
 24 2016, this demand letter, right?
 25 A. Yes, I did.

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
 2 Q. And Forall is seeking
 3 4.5 million dollars from you and your
 4 brother, right?
 5 A. Yes, I do. I don't know why,
 6 but I do.
 7 Q. How are you doing, Dr. Hamad?
 8 Still okay?
 9 A. Yes, it's okay. I'm fine.
 10 Q. Okay. You've spoken about some
 11 of your financials, and I just want to
 12 show it so you can speak to the
 13 document. Okay?
 14 MR. LEWIS: I'm going to
 15 show joint Exhibit 41, and I'm
 16 almost done.
 17 Q. Dr. Hamad, can you see my
 18 screen?
 19 A. Yes.
 20 Q. Explain for Mr. Farber what this
 21 is and what it's showing us?
 22 THE ARBITRATOR: Is this one
 23 in evidence?
 24 MR. LEWIS: It is.
 25 A. So that show the total assets

84 (Pages 330 to 333)

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 liability for Sarah LLC after -- which
3 is 5/3/2013 this is almost less than
4 two years into the operations.

5 Q. Okay. And -- all right. So
6 will you tell Mr. Farber what the
7 significance of this is? What's the
8 takeaway that you have from this?

9 A. It shows the liability of 1.191
10 million dollars [sic] and on that store
11 in operations, which means at that
12 point -- this is not taking into
13 consideration that build out of the
14 store. This is how much we lost money.
15 How much liability we have.

16 Q. "Total net income, total equity
17 figure," what is that?

18 A. Which one? I'm sorry. I have
19 to take a look. It's total liquidity
20 in the minus, 952,000. Returned
21 earnings in the minus. You know,
22 everything is in the minus. I mean, as
23 far as I could look here.

24 THE ARBITRATOR: Well, the
25 biggest number by far is what

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1 DIRECT-EXAMINATION OF DR. A. HAMAD
2 says "Due to Members;" what is
3 that?

4 THE WITNESS: Those are the
5 loans we provided to Sarah LLC,
6 Honor. That's my loan to the
7 store. I put my saving and I
8 took a loan on my house, because
9 I believed in what they told us.

10 THE ARBITRATOR: And Dr.
11 Hamad, this balance sheet, who
12 prepared it?

13 THE WITNESS: My tax people.
14 This is provided to the IRS, I
15 think. This is our tax paper.

16 THE ARBITRATOR: All right.

17 MR. LEWIS: If you're done,
18 Mr. Farber, I'm going to stop the
19 share.

20 THE ARBITRATOR: Do you have
21 anything else, Mr. Lewis?

22 MR. LEWIS: I've got sales
23 figures, but I can do that with
24 Dr. Hamad's brother.

25 THE ARBITRATOR: It's up to

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1 PROCEEDINGS
2 you.

3 MR. LEWIS: I think it's
4 probably a good place to stop.

5 THE ARBITRATOR: All right.
6 Then what I'd like to do before
7 we talk about the cross -- which
8 we might pick up in the morning
9 -- is let's take a look for a
10 minute at Respondent's exhibit
11 book. And can you tell me, Mr.
12 Lewis, which, if any, of these
13 documents you still object to.

14 MR. LEWIS: I'm in a bit of
15 a disadvantage that I don't have
16 respondents hard copies, so we've
17 got a spreadsheet we've put
18 together and I'm going to pull up
19 and work from, and I'd like Mr.
20 Shah to join me in this, because
21 he's been working closely on the
22 documents.

23 THE ARBITRATOR: That's
24 fine. Mr. Shah, if you're the
25 one who wants to tell me about

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1 PROCEEDINGS
2 this, that's fine.

3 MR. LEWIS: Again, to Mr.
4 Brown's credit, he and I spent
5 some time on these documents when
6 we were preparing for testimony,
7 and I really thought we were
8 further along in terms of have
9 having an agreement on all of
10 them, but we've got Exhibit 125,
11 126, 127, 128, 129, 144, and 145
12 that contain accounting, so it's
13 not as much an objection as --

14 THE ARBITRATOR: Hang on.
15 The ones you just read off, do
16 you still object to those or not?

17 MR. LEWIS: Again, Mr.
18 Farber, it's not an objection as
19 much as we need someone to
20 translate it, the Italian portion
21 of the documents.

22 THE ARBITRATOR: Oh, it's in
23 Italian. I didn't know that.

24 Mr. Brown, it's tough to get
25 someone on the last minute to

85 (Pages 334 to 337)

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1 PROCEEDINGS

2 agree or disagree if he doesn't
3 have them translated, so.

4 MR. BROWN: Well, Your
5 Honor, they were provided over a
6 year ago, and I don't -- I'm
7 looking at 125. I don't see any
8 Italian. Earlier on there is
9 some Italian from Luca.

10 THE ARBITRATOR: Hold on,
11 Mr. Brown.

12 Mr. Lewis, I'm being told
13 these were provided a year ago.

14 MR. LEWIS: We've had them
15 for a while; that is correct.

16 THE ARBITRATOR: Then why
17 should I give any credence to an
18 objection that you haven't had
19 time to get them translate.

20 MR. LEWIS: Well, I can
21 appreciate that, and perhaps we
22 can work to do that before
23 Mr. Brown needs to use them when
24 he's presenting his case. I was
25 really more saying it in case the

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2 witness who's being shown that
3 can translate it for us and tell
4 us what that means in English,
5 but either way is fine.

6 THE ARBITRATOR: Let me go
7 back. Exhibits 117, 119, and
8 120, do you have any objection?

9 MR. LEWIS: 117, no. 119,
10 no. 120, no.

11 THE ARBITRATOR: Okay. So
12 those are going to be in evidence
13 on consent.

14 Now, 125, 126, 7, 8, 9, 144
15 and 145, do you have any other
16 objections other than there are
17 portions in Italian?

18 THE ARBITRATOR: That's the
19 only objection. Objection is
20 overruled. The documents are
21 received.

22 MR. LEWIS: Mr. Farber, may
23 I share with you the exhibit
24 numbers where we're withdrawing
25 our objection.

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2 THE ARBITRATOR: Well, let
3 me go in order as long as I'm
4 doing it this way.

5 157, 158 did you have
6 objections?

7 MR. SHAH: We do have
8 objections.

9 THE ARBITRATOR: What is the
10 objection on there?

11 MR. SHAH: Authentication.
12 157 is a list and it's not clear
13 who prepared that list.

14 THE ARBITRATOR: Okay. Then
15 we're not going to admit those
16 right now. What about 158?

17 MR. SHAH: It's a receipt
18 and same, we don't know who
19 prepared the receipt.

20 THE ARBITRATOR: What about
21 174, 6, 7, 8 and 9.

22 MR. BROWN: How do you --
23 it's a receipt -- it's a
24 document. I mean, I don't
25 understand that objection to 158,

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2 but honestly, if I need that
3 document to demonstrate we turned
4 in the keys on August 9th, I'll
5 put follow on and get it on.
6 That's not a big deal. Whatever.
7 It's not a legitimate objection.

8 THE ARBITRATOR: All right.
9 174, 6, 7, 8, and 9, any
10 objection?

11 MR. SHAH: 174 there is no
12 description on Respondent's
13 spreadsheet. I believe the entry
14 for that was blank.

15 THE ARBITRATOR: All right.
16 Then what about the others?

17 MR. LEWIS: Mr. Brown, you I
18 talked about these. What "CMs"
19 mean, I'm not sure that either
20 call or --

21 MR. BROWN: These were
22 information and reports run from
23 Ms. Settimi's office for Forall
24 out of her accounting software.
25 They're certainly relevant. We

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can put them on now or I can put her on, but we haven't been doing that with each of these documents.

These are accounting entries regarding advertising costs, discounts, credits given, this is all the back up for the financials of what was credited and ordered by.

THE ARBITRATOR: Mr. Lewis, Mr. Shah, do you have objections to these or not?

MR. LEWIS: If -- if he has a witness that -- obviously, we haven't been put through our basis on doing foundation, but I believe that we have sales figures that we received from Simon that Mr. Farber said we would have to lay a foundation for.

If Mr. Brown can lay a foundation for one, I have no

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objection to the rest.

MR. BROWN: That's different. The Simon objection you just provided them post sharing an exhibit list, not discovery time period. I provided these over a year ago. They were responsive and they're absolutely germane, and it's not an analogy to form to the Simon docs which were received only 10 days.

THE ARBITRATOR: Any further response on that point Mr. Lewis or Mr. Shah?

MR. LEWIS: No objection, Your Honor.

THE ARBITRATOR: All right. Then all those are in. What about 184?

MR. LEWIS: I would say this, and again back to the meeting I had with Mr. Brown, my understanding is how we agreed to

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resolve these objections were laying some kind of foundation for the financial documents, and we -- that would resolve our objections. That's what I thought we left it.

THE ARBITRATOR: Isn't one before an e-mail with some attached financial information?

MR. BROWN: Yes, it is. From Luca Spano, December 11, 2011.

THE ARBITRATOR: So what's the problem with 184?

MR. LEWIS: Again, it's not a problem per se with that document as it is with the standard alone financials that were being offered on both sides, that both sides objected to.

You allowed ours in earlier, Mr. Farber, and so in spirit of that same, if these are standalone documents that they

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produced timely --

THE ARBITRATOR: 184 is in. What about 196, 7, and 8?

MR. SHAH: We've withdrawn our objections to those three.

THE ARBITRATOR: What about 202, 203, and 204.

MR. SHAH: Objection to 202. It's a standalone excel document. There's no parent e-mail. It's not clear who prepared the document and what the context of the document is.

MR. BROWN: This was provided to me from Palma Settimi's files, Your Honor, so these were paper files that were copied, but it's relevant. The title of it is "Sarah Invoices/Statement," about it's the purchase orders and then the construction discount that we applied to that. This whole subset is that.

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THE ARBITRATOR: I'm going to take these documents, but you certainly can ask about them, and they'd be subject to a motion to strike if I'm not convinced that they're authentic. So those three are going to be in as well.

All right, 208 and 209?

MR. SHAH: Your Honor, 208 we're objecting to it. It's a handwritten note with two numbers on it for authentication. And then 209 is a typed note with just one phrase on it. There's no context. We have no idea who prepared these.

THE ARBITRATOR: Right. I think Mr. Brown on these two you've got to lay a foundation.

MR. BROWN: All right. Fine.

THE ARBITRATOR: All right so those two are not in. 221?

MR. SHAH: We withdraw our

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objection to that.

THE ARBITRATOR: 225, 26, and 28.

MR. LEWIS: I know 225 we resolved our objection on.

THE ARBITRATOR: 226?

MR. BROWN: 226.

MR. LEWIS: Well, 226 we just received this weekend, so our objection stands on that.

THE ARBITRATOR: What is it?

MR. LEWIS: The description we have is it's an expense sheet run accounting software, Las Vegas rent expenses.

THE ARBITRATOR: Mr. Brown, any comment?

MR. BROWN: Yeah. 831 is a report Ms. Settini ran from her accounting software relative to this. I apologize, we were crunched with time so this isn't exactly how I would have -- I didn't expect to find this

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exhibit here.

Why don't we just -- there's actually two different exhibits, and they're broken out later in these spreadsheets, so I think 226 should really just be stricken as a non-exhibit and 228 seems to be totally blank.

THE ARBITRATOR: All right. So 226 and 228, no. 287, 88 -- I'm sorry I skipped 286. 86, 87, 88, 89 and 90.

MR. SHAH: We withdrew our objections to those.

THE ARBITRATOR: 317 and 18.

MR. SHAH: These are settlement communications between Forall and Sarah and their counsel. We'd argue that they're inadmissible pursuant to Rule 4547.

THE ARBITRATOR: Mr. Brown.

MR. BROWN: They claim that they had never heard from us

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again until a year later, and that's certainly relevant to that argument, to the extent that is even an argument.

THE ARBITRATOR: The objection is going to be sustained. I'm not taking settlement documents. If you want to establish communication, you can ask a witness about that, and if the witness needs his or her recollection refreshed by reference to this you can do it, but I'm not going to -- I think Mr. Lewis is correct -- Mr. Shah is correct. I'm not going to take settlement documents.

MR. BROWN: But you know, I don't know if -- can we just double-check this notion that this was a settlement discussion? Give me one second. I haven't heard that --

THE ARBITRATOR: The subject

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2 description says "Rejection of
3 Sarah settlement proposal."

4 MR. BROWN: That's the
5 second document. The first
6 document doesn't say that. I'm
7 just -- bear with me. My e-mail
8 does say for settlement purposes
9 only, so all right.

10 THE ARBITRATOR: 534?

11 MR. SHAH: We've withdrawn
12 our objection to that.

13 THE ARBITRATOR: 529.

14 MR. SHAH: Your Honor, we're
15 going to object because that's a
16 settlement communication as well.

17 MR. BROWN: I just want some
18 basis to introduce the fact that
19 discussions were had, and I'll be
20 willing to redact any actual
21 settlement numbers that are
22 discussed, but I'm not -- I
23 can't, as I sit here right now,
24 say that the discussion itself
25 wasn't germane to this issue.

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2 THE ARBITRATOR: Why as
3 arbitrator is it important for me
4 to know whether or not there were
5 settlement discussions?

6 MR. BROWN: Because this was
7 -- this was right at the heels of
8 our eviction, so, you know, we
9 may have said -- I don't know.
10 I'll look at it again. I think
11 if it's important, I may -- let
12 me reserve the right to bring it
13 back up, if you don't mind.

14 THE ARBITRATOR: You can try
15 it again, but right now I think
16 that Mr. Lewis and Mr. Shah have
17 the better of the argument, so
18 I'm going to agree with their
19 position, and I'm going to
20 sustain that objection.

21 Last 198 and 599?

22 MR. BROWN: These are
23 documents that I produced very
24 late in the game. They were
25 produced by Ms. Settini upon prep

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2 of this -- of her testimony here.
3 They were, to the extent not
4 previously produced,
5 inadvertently not previously
6 produced, but they're important
7 to the case.

8 The first 831 is the credit
9 month memo that Forall credited
10 to the Italnord, so this was not
11 actually something that was
12 requested in the document
13 production, but it demonstrate
14 that this movement of the \$38,000
15 which is at issue here.

16 THE ARBITRATOR: Mr. Lewis,
17 Mr. Shah, what's the basis of
18 your objection?

19 MR. LEWIS: Well, the fact
20 that we received it two days ago
21 while we were preparing for this
22 arbitration is the primary
23 objection.

24 THE ARBITRATOR: Mr. Brown
25 is telling me that this was not

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2 the subject a document request;
3 do you agree?

4 MR. LEWIS: We certainly
5 disagree. This is our damages.
6 38,000 is one of the -- a portion
7 of the damages that we're
8 claiming, and this is proof that
9 Forall credited this to Italnord
10 when we're saying that should
11 have been credited to us.

12 MR. BROWN: So then let it
13 in, and we can talk about it.
14 What's the objection?

15 THE ARBITRATOR: Okay. No.
16 I think that since it was
17 produced two days ago, and it was
18 the subject of a document
19 request --

20 MR. BROWN: What document
21 request? I have it right here.
22 I can look at it. Which number?

23 MR. LEWIS: I don't have it
24 right here.

25 MR. BROWN: I think we need

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 2 to know that before we state that
 3 affirmatively.
 4 THE ARBITRATOR: Gentleman,
 5 at this point I think Mr. Lewis
 6 has the better of the argument.
 7 I will not take it.
 8 But Mr. Lewis, I do want
 9 you, between to night and
 10 tomorrow morning, or Mr. Shah, to
 11 send an e-mail to Mr. Brown
 12 indicating which document
 13 request.
 14 And Mr. Brown, you can
 15 re-raise this issue depending
 16 upon the nature of the response,
 17 all right?
 18 MR. BROWN: All right.
 19 Thank you.
 20 MR. SHAH: What exhibit
 21 number, again?
 22 THE ARBITRATOR: I'm talking
 23 about 598 and 599.
 24 MR. SHAH: Thank you.
 25 THE ARBITRATOR: So just to

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 2 summarize, except for 157, 158,
 3 208, 209, 226, 228, 317, 318,
 4 592, and tentatively 598 and 599,
 5 all the other documents are
 6 admitted. Okay.
 7 Ladies and gentlemen, in my
 8 view you've worked very hard
 9 today.
 10 Maggie, how many pages did
 11 we do today?
 12 Well, that's certainly a
 13 good day of testimony and
 14 argument, and I appreciate your
 15 hard work. We're going to pick
 16 up the cross tomorrow at 9:30.
 17 Two other points as
 18 indicated, I have to give a
 19 lecture on arbitration between
 20 9:00 and 9:30, so I may be a
 21 minute or two late.
 22 And number two, Dr.
 23 Hamad, tomorrow, when you're
 24 preparing the cross examination,
 25 I'd like you to have a pad with

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 2 you for your testimony, all
 3 right, a pencil and pad.
 4 MR. LEWIS: Okay. Thank
 5 you.
 6 THE ARBITRATOR: All right,
 7 everyone. Does anyone else have
 8 anything else that you feel needs
 9 to be raise before we adjourn,
 10 Mr. Lewis, Mr. Shah?
 11 MR. LEWIS: Nothing on my
 12 end.
 13 THE ARBITRATOR: Mr. Brown,
 14 Mr. Crowe?
 15 MR. BROWN: Yes. Can we
 16 just get some insight as to our
 17 adversary's witness plan for
 18 testimony after we get through
 19 with this gentleman?
 20 THE ARBITRATOR: Fair
 21 request.
 22 Mr. Lewis, who do you have
 23 on tomorrow?
 24 MR. LEWIS: Tonight I'm
 25 going to decide whether or not

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 2 I'm going to need to present both
 3 Ghanem and Dr. Bachar Hamad. It
 4 may just be one. So I would like
 5 to be able to get through all of
 6 our witnesses tomorrow.
 7 THE ARBITRATOR: Okay. When
 8 you've made that decision, I'd
 9 like it, even if it's very late,
 10 for you to send an e-mail to Mr.
 11 Brown and Mr. Crowe with a copy
 12 to me of what your decision is.
 13 And then, Mr. Brown, Mr.
 14 Crowe, if he's finished tomorrow
 15 -- well, let me ask you, Mr.
 16 Brown, do you have any
 17 anticipation right now of how
 18 long your cross is going to be?
 19 MR. BROWN: It's going to be
 20 a couple of hours. No question.
 21 THE ARBITRATOR: Okay. Then
 22 I think we have time to deal with
 23 all of that. All right. And
 24 what I would like you to do is --
 25 do you know who your first

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witness is going to be,
Mr. Brown?

MR. BROWN: Not as I sit in
the chair right now, no.

THE ARBITRATOR: Okay. Same
decision, you may not know
tonight, because you may only
want to decide after you've heard
their testimony, but when you do
know, I'm going to want you to
e-mail Mr. Lewis and Mr. Shah and
tell them who you decided it
should be, all right?

MR. BROWN: No problem.

MR. SHAH: Mr. Farber, just
one thing for the e-mail we're
going to send about the
witnesses, Mr. Brown, could you
send us Mr. Crowe's e-mail
address?

MR. CROWE: I'll give you it
right now.

It's vcrowe@BTSIaw.com.

THE ARBITRATOR: All right

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everyone. Thank you very much.
(Time noted: 5:29 p.m.)

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C E R T I F I C A T E

I, MAGDALENA M. ARTILES, a shorthand
reporter and Notary Public within and
for the State of New York, do hereby
certify:

That the Witness(es) whose testimony
is hereinbefore set forth was duly sworn
by me, and the foregoing transcript is a
true record of the testimony given by
such Witness(es).

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that I
am in no way interested in the outcome
of this matter.



Magdalena M. Artiles, a Court
Reporter and Notary Public
Date: November 5th, 2020

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AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration of

SARAH LLC, HALA SUBH, SUHAD ALBASHA,

BACHAR HAMAD AND AMAR HAMAD,

CLAIMANT,

-and-

Case No.:

01-18-0000-6180

FORALL USA, INC.,

RESPONDENT.

-----X

DATE: October 27, 2020

TIME: 9:40 a.m.

ARBITRATION in the above
entitled matter, held Via Zoom,
transcribed by Magdalena M. Artiles, a
Notary Public of the State of New York,
held before Eugene I. Farber,
Arbitrator.

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Palma Settimi

Sana'a Hussein

* * *

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PROCEEDINGS

THE ARBITRATOR: Dr. Hamad,
 good morning. You're on mute,
 Dr. Hamad.

THE WITNESS: Good morning,
 sir.

THE ARBITRATOR: Okay. So
 Dr. Hamad, you're now going to
 have cross examination by
 Mr. Brown, and here are some
 rules that I want you to observe
 in connection. It's not that I
 want, I insist that you observe
 during the cross examination.

First of all, please
 understand that your job is to
 answer the questions as directly
 and succinctly as you can. I do
 not, under any circumstance, want
 you to be fighting with
 Mr. Brown. Mr. Brown is the boss
 of the examination. Now, when we
 broke last night, I asked that
 you please have a pad.

THE WITNESS: I do.

PROCEEDINGS

THE ARBITRATOR: Good. The
 reason I asked you to have a pad
 is as follows: Mr. Brown is
 going to be asking you questions,
 and I don't want you to give any
 explanation at all unless he asks
 for it or I ask for it.

There are going to be times
 during the course of the
 examination that you will want to
 explain. You're going to want to
 explain, you're going to want to
 say, "No, just answering "yes" or
 "no" is not good enough. I want
 to explain." Do not explain.
 What you do is you make a note on
 your pad of the area that you
 would like to explain.

When Mr. Brown is finished
 with his cross examination, I
 will give you an opportunity to
 consult -- I don't see Mr. Shah.
 There's Mr. Shah -- to consult
 with Mr. Lewis and Mr. Shah, and

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they will decide on the second set of questioning called "redirect," if they want to ask you questions so that you can provide the explanations that you wanted to give.

So listen to his question, if you can answer his question "yes," "no," "I don't know," "I don't remember," that's fine. If you want to give an explanation, only give the explanation if I ask you or if he asks you.

If he does not ask you, and he moves on to another question, that's it. You can make a note and as I said then later on you'll be able to provide the explanation. And I repeat, under no circumstance am I going to allow any fighting or arguing between you and Mr. Brown.

If -- if there's going to be a fight, he's going to win every

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time. He's the boss of the cross. All right? So with that in mind, what I want you to do now is listen carefully to his questions and respond.

MR. LEWIS: Before we begin, Mr. Farber, if I may, there's a couple of housekeeping points that I've discussed with Mr. Brown yesterday that I'd like to share with you.

THE ARBITRATOR: Go ahead.

MR. LEWIS: First, after meeting with my clients yesterday, we have decided to withdraw the allegations about the internet and E-commerce. They weren't included in any damages calculation, but we do have allegations to that effect in our brief, and we are withdrawing them officially at this point.

THE ARBITRATOR: All right.

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Anything else?

MR. LEWIS: I want to ask if Mr. Brown has any more clarity on the order of his witness, which delves into my third point which is the allowance of experts to listen into the other expert's testimony.

THE ARBITRATOR: Okay. On the order of the witnesses, as soon as we're finished with the cross examination, I will -- I or at some point as, I do every day, I'll ask counsel for the witnesses so that he can -- unless you know something right now, Mr. Brown, if you have better information about your witnesses, but hang on.

Mr. Lewis, after Dr. Hamad you have other witnesses, right, you said so yesterday?

MR. LEWIS: That's correct, but I believe Dr. Bachar's

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testimony is going to be brief.

THE ARBITRATOR: Okay. And are you calling anyone beyond Dr. Bachar or you haven't made up your mind yet?

MR. LEWIS: He's for rebuttal.

THE ARBITRATOR: Okay. Mr. Brown, do you know who you're going to start with?

MR. BROWN: It's either going to be Palma Settini or Paolo Torello-Viera, but I haven't made that determination yet.

THE ARBITRATOR: As soon as you do, let Mr. Lewis know. On the second point, Counsel, it's really up to you unless you disagree, I'll rule.

Mr. Lewis, do you prefer that the experts sit in for the other experts' testimony or not?

MR. LEWIS: I do.

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THE ARBITRATOR: Mr. Brown,
how about you?

MR. BROWN: One moment, if
you would.

THE ARBITRATOR: All right.

MR. BROWN: Mr. Farber, I
think it -- due to -- they can't
go at the same time, so one will
have the advantage of the other,
I will prefer that they did not
listen in or on the others.

MR. LEWIS: Well, just to
respond, Mr. Farber, our expert
is a rebuttal expert, so it makes
complete sense for him to listen
to the testimony that he's going
to be called to rebut.

THE ARBITRATOR: No. I
think Mr. Lewis has a better
point here. I certainly had
many, many, hundreds of experts
testify before me. I looked at
the credentials of both experts
here. I think that they are both

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people with some integrity, and
I'm going to allow them to listen
to the others' testimony.

And, you know, you can have
your expert stay in while Mr.
Lewis' expert talks and vice
versa in light of the
disagreement. I think Mr. Lewis
has the better of the argument
here. So we're going to hand it
that way.

Mr. Brown, why don't you
proceed.

MR. BROWN: Mr. Farber, can
you just remind the witness that
he is under oath?

THE ARBITRATOR: I thought I
had, but Dr. Hamad, you remain
under oath, and please act
accordingly.

Go ahead, Mr. Brown.

MR. BROWN: Thank you.

* * *

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CROSS-EXAMINATION OF DR. A. HAMAD
CROSS-EXAMINATION BY
MR. BROWN:

Q. Good morning, Dr. Hamad. How
are you?

A. Good morning. How you doing?

Q. Good. Thank you for your time
today. Are you an owner of Sarah --
Sarah LLC?

A. No.

Q. Who are the owners of that LLC?

A. Suhad Albasha and Hala Subh.

Q. And who are those persons?

A. Suhad Albasha is my wife; Hala
Subh is my brother's wife.

Q. And who is your brother?

A. Bachar Hamad.

Q. What is -- do you have a title
with Sarah LLC?

A. I don't believe so.

Q. What connection do you have with
Sarah LLC?

A. My wife is an owner.

Q. So your testimony in this
proceeding is under -- under what

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CROSS-EXAMINATION OF DR. A. HAMAD
guise?

A. Working on behalf of my wife.

Q. You're representing -- you're
testifying on behalf of your wife?

A. No. I said I am -- my wife --

THE ARBITRATOR: Hang on, he
didn't ask you -- you answered,
"No," that's a sufficient answer.

Next question. Go ahead,
next question, Mr. Brown.

MR. BROWN: Give me one
moment to confer with my
co-counsel, Mr. Farber.

THE ARBITRATOR: All right.

Q. Doctor, do you have any interest
in this litigation or arbitration?

A. What do you mean?

Q. Do you have any investment in
Sarah LLC?

A. Yes, I do.

Q. And is that a personal
investment?

A. Yes.

Q. The loans that were set forth on

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CROSS-EXAMINATION OF DR. A. HAMAD
your profit and loss statement that we
were viewing yesterday, in your
question from your counsel, were those
loans made by you?

A. And my brother.

Q. Were they loans made by your
wife in any respect?

A. No.

Q. So you have -- you are an
investor in Sarah LLC; is that right?

A. Yes.

Q. Were you a guarantor of any
obligations that Sarah LLC was party
to?

A. Yes.

Q. Which were those? Which are
those, I should say?

A. Financial guaranty.

Q. Can you describe or tell me what
guaranty you signed on behalf of
Sarah's obligation?

A. There is a document, financial
guaranty, I don't have it in front of
me now.

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CROSS-EXAMINATION OF DR. A. HAMAD
involved in any retail stores or
operation?

A. No.

Q. Prior to opening the Pal Zileri
store and entering into the lease with
the Forum shops, did you do any kind of
market analysis on Las Vegas and mens'
fashion wear?

A. Pal Zileri did it for us.

Q. Tell me about that.

A. Luca, explain to us what the
market -- and I think there was some --
some sort of document. I can't
remember. But he explained the market,
the sales expectation, how much to sell
and so forth.

Q. And did you see the business
proposal that I believe you testified
was submitted to -- I'm sorry -- that
Luca testified was submitted to Pal
Zileri and Forall before it was
submitted?

MR. LEWIS: Objection.

A. I don't --

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. Is that a guaranty guaranteeing
Sarah's performances with Forall?

A. Yes.

Q. And who else provided those
similar types of guarantees?

A. My brother, Bachar Hamad, and I
think his wife, and then and the
document, and my wife.

Q. Okay. Prior to your -- your
venture in Las Vegas in the Pal Zileri
store, had you had any retail
experience?

A. No.

Q. Did you ever work in a clothing
store?

A. No.

Q. Did you own any other interests
in a luxury high-end retail store?

A. No.

Q. Do you currently own any
interest in any retailers?

A. No.

Q. Other than Sarah LLC and the Pal
Zileri store, have you ever been

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CROSS-EXAMINATION OF DR. A. HAMAD
THE ARBITRATOR: What's the
objection?

MR. LEWIS: Foundation.

Assuming that this proposal was
shown to Dr. Hamad when Luca
testified about it, Dr. Hamad has
not testified viewing the
proposal.

THE ARBITRATOR: Overruled.

You can answer.

A. I didn't.

Q. Did your brother have it
prepared?

A. I don't remember.

Q. Were you part of the initial
investment group that your brother had
put together or did you come on later?

A. I came on later.

Q. When did you come on?

A. Just before the store started,
opened.

Q. And did his other investors drop
off?

A. I don't know.

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. Is it fair to say that Bachar has more information as to the earlier business proposal and earlier discussions with Forall?

A. Absolutely.

MR. BROWN: I'm going to show what's been introduced already as Exhibit 55 Claimant's 10608. I'm going to share my screen. I'm going to clear a couple of things up from yesterday.

Q. Doctor, can you see my screen?

A. Yes.

Q. Okay. I believe this document was shown to you by your counsel yesterday; do you recall that testimony?

A. Yes.

Q. Okay. And this document was forwarded to you by your brother on July 18, 2016; do you see that heading?

A. Yes.

Q. Prior to that time, had you ever

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CROSS-EXAMINATION OF DR. A. HAMAD

seen this correspondence?

A. I don't recall.

Q. And you testified yesterday that it would have been impossible for you to take back the store after Forall's management because Simon had given you your last warning; isn't that right?

A. Yes.

Q. And you -- you base that -- I'm sorry. Hold on one second. And you base that on this e-mail; is that evidence of that fact?

A. I believe so, because my brother receive it and talk to him about it.

Q. Okay. Now, down below there is an e-mail from Bachar to Todd Eads at Simon on February 17, 2018, and do you see this e-mail here?

A. Yes, I do.

Q. It says, "Good morning, please let me know if you are going to get the store back to Simon and not allow Pal Zileri to take over, so I can sign the paper and send it back to you, thank

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CROSS-EXAMINATION OF DR. A. HAMAD
you"; do you see that?

A. Yes, I do.

Q. What paperwork was Bachar referencing?

A. I don't know.

Q. Do you recall that at this time Forall was managing the store under the management --

A. Yes, I do.

Q. And why was there an on-going effort to get the store back to Simon at this time by Sarah or your brother?

MR. LEWIS: Objection.

THE ARBITRATOR: What's the objection?

MR. LEWIS: Form.

Mischaracterizing testimony.
"On-going effort to get the store back to Simon."

THE ARBITRATOR: Mr. Lewis, we're in arbitration. We don't get involved in form unless the witness doesn't really understand it. Overruled. You can answer.

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Due to the poor performance of the store, and due to the fact that Simon had since June or July -- I'm sorry -- Forall had since June or July of 2015 a discussion with Simon to see if they need to renew the lease, take over the lease, or find a new space.

Q. So why were you going around Forall and Paolo at this time and having discussions directly with Simon about getting the store back to Simon?

A. My understanding that Forall never communicated with Simon about taking over the store. They were given an opportunity to do that and they never did.

Q. How do you know that?

A. From Todd Eads.

Q. When did he tell you that?

A. He talked to my brother in January 2016 and he said, "I have not had a conversation with Forall whatsoever since they came to visit me, I think, in August 2015."

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 Pal Zileri went there for two or
3 three days and then disappeared and
4 never replied to his request if he was
5 going to take over and change the lease
6 and so forth.

7 Q. So you have that understanding
8 based on a conversation your brother
9 told me about?

10 A. It is a conversation,
11 absolutely, yes.

12 Q. Did you have that -- any
13 conversation with Todd Eads at that
14 time?

15 A. Not personally, but my brother.

16 Q. So this paperwork -- wasn't this
17 a lease cancellation or a -- similar to
18 what you'd signed in October '14, that
19 it was a letter agreement with Simon to
20 turn back the store or for them to find
21 a replacement tenant?

22 A. Repeat your question.

23 Q. Wasn't this paperwork that
24 Bachar is referencing with Todd that
25 Todd had sent to him, wasn't that a --

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 2016?

3 A. Personally, I don't recall.

4 Q. Did you tell Forall that you
5 were going to be executing a letter
6 agreement authorizing Simon to find
7 another replacement tenant?

8 A. I don't recall.

9 Q. Did you have any conversation
10 with Pal Zileri or anyone at Forall at
11 this time about the management of the
12 store, the management agreement, or the
13 lease?

14 A. Yes.

15 Q. You did?

16 A. I didn't personally, but there
17 was a letter sent.

18 THE ARBITRATOR: He didn't
19 ask you about that. He just
20 asked you if you had any
21 conversation. If he asks you
22 what the conversation is, then
23 you can answer him.

24 A. I believe there was a
25 conversation.

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 was it a letter agreement to allow
3 Simon to look for a replacement tenant?

4 A. Not necessarily.

5 Q. Did you or your brother produce
6 any documents regarding what this
7 paperwork was that had been provided by
8 Simon?

9 A. What paperwork?

10 Q. Do you know if you produced any
11 paperwork evidencing what Todd, Simon,
12 purportedly sent to Bachar in February
13 of '15?

14 A. I think he's talking about the
15 same paperwork he did in October 2014.

16 THE ARBITRATOR: Let's just
17 -- he didn't ask you what you
18 think. He just asked you a
19 question. If you have knowledge
20 of something.

21 A. No.

22 THE ARBITRATOR: Okay.

23 Q. Did you or your brother execute
24 a letter agreement authorizing Simon to
25 find a replacement tenant in or around

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 Q. By you?

3 A. By -- I don't remember me or my
4 brother, but there was a conversation.

5 Q. But you don't know if you had
6 it?

7 A. I don't recall now, but there
8 was a conversation.

9 Q. Okay. So I'm going to look at
10 this e-mail again that you talked about
11 yesterday from Todd Eads back to
12 Bachar.

13 He says, "Hi, Dr. Hamad, we do
14 not plan to transfer the store to Pal
15 Zileri corporate. It does not appear
16 the lease allows the assignment to
17 corporate. Sign the paperwork and
18 return it and we will earnestly begin
19 finding a replacement"; do you see
20 that?

21 A. I see that.

22 Q. Do you remember whether Bachar
23 signed the paperwork at that time and
24 sent it to Todd?

25 A. I don't remember. I don't know.

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. Do you believe that it happened?

A. I don't believe at that time,
but I don't remember.Q. Okay. So you testified
yesterday that communication by Todd
was evidence that it was impossible for
you to take back the store in September
after the management agreement; do you
recall that testimony?

A. Absolutely.

Q. And let me ask you a question:
Who is on the lease with Forum shops?

A. Sarah LLC.

Q. Is Forall USA or Forall
corporate on that lease?

A. No.

Q. And Mr. Eads says, "The lease
does not allow for an assignment to
corporate"; do you see that?

A. Yes, I do.

Q. Do you have an understanding
what he is saying there?A. He is saying he doesn't want Pal
Zileri to take over the lease.

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Absolutely. No doubt about it.

Q. Okay. And does Mr. Eads say to
you -- to your brother, Simon is
terminating the lease in this e-mail?A. He wants -- he wants him to sign
the agreement. Again, repeat that
question.MR. BROWN: Maggie, can you
read it back?(Whereupon, a portion of the
record was read back.)

A. That's what he's implying.

Q. But it doesn't say that, does
it?

A. That's what he's implying.

Q. "Yes" or "no," sir, does it say
that?

A. In my interpretation --

THE ARBITRATOR: He asked
you if you have an understanding
if it says that.

THE WITNESS: It says that.

THE ARBITRATOR: Okay. Okay
his answer is "yes".

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CROSS-EXAMINATION OF DR. A. HAMAD

(Connection disruption.)

Q. -- by Sarah to assign it, do you
have an understanding of that?A. No, that's your understanding.
Our understanding is that they will not
give the lease to Simon.Q. Okay. But do you understand
that Todd is not saying Sarah can't
continue to operate the store under the
lease?

A. Say it again.

MR. BROWN: Maggie, can you
repeat that question?(Whereupon, a portion of the
record was read back.)A. I don't understand the question.
Can you rephrase it?Q. Did Todd Eads say in this e-mail
Sarah cannot take back the store after
the term of the management agreement?A. He's saying he wants the store
back.Q. That's what you think this
e-mail says?

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CROSS-EXAMINATION OF DR. A. HAMAD

MR. BROWN: Okay.

Q. At any time, sir, did Simon
advise Sarah that it was terminating
the lease prior to July -- prior to you
-- your Sarah LLC executing the
cancelation of lease?

A. Repeat that question.

Q. At any time prior to Sarah LLC
or its representatives executing the
cancelation of lease in June of 2016,
did Simon ever communicate to you or
your brother or anyone else at Sarah --A. Yes. Through the e-mail. It
appears they want to take the lease
back.Q. Okay. So through this e-mail,
this is the communication that you
believe says that?

A. Absolutely.

Q. Were there any other e-mails or
communications that say that?A. He talked to my brother on the
phone.

Q. But anything else in writing?

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CROSS-EXAMINATION OF DR. A. HAMAD

A. He talked to my brother on the phone. No.

Q. Okay. I'm sorry. Bear with me. Dr. Hamad, why did your brother forward this e-mail to you on July 18, 2018; do you recall?

A. I don't recall.

Q. And July 18, 2016, was that right around the time you had advised Forall that you were -- that you had canceled the lease?

A. July what?

Q. Let me rephrase that question. Did you ever advise Forall that you canceled the lease in June of 2016?

A. Yes. I think there was a -- yes.

Q. You would -- okay. When was that?

A. I don't remember that date, but was late June I think.

Q. And --

A. Early July.

Q. In that letter, did you -- did

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CROSS-EXAMINATION OF DR. A. HAMAD

THE WITNESS: Yes.

THE ARBITRATOR: Okay.

Q. What were those correspondence?

A. The e-mail -- exchanged e-mail between us and Paolo about the six months notice and mail it to the -- to the management agreement.

Q. And those e-mails you just referred to, were those sent prior to the execution of the management agreement, which was executed in March of 2015?

A. Close to the management agreement, yes.

Q. But nothing after that point in time?

A. I had a couple of phone conversations with Paolo about this issue, but that's around the execution time for the management agreement.

Q. Okay.

MR. BROWN: Okay. I'm going to put in front of the witness what's been Joint Exhibit 236,

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CROSS-EXAMINATION OF DR. A. HAMAD

your lawyer state that Sarah had canceled and voluntarily surrendered the lease?

A. I don't recall the language of the letter.

Q. But you never had any conversation or wrote any correspondence to that effect?

A. With who?

Q. With anyone.

A. I don't understand your question.

Q. Did you -- did you --

THE ARBITRATOR: Go ahead.

Q. Did you, yourself, have any communications or correspondence advising Forall that you had terminated and voluntarily surrendered the lease in June of 2016?

A. From the prior agreement, we needed six months.

THE ARBITRATOR: He didn't

ask you that. He just asked you if you had any correspondence.

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CROSS-EXAMINATION OF DR. A. HAMAD

Claimant's 000634. Share my screen.

Q. Dr. Hamad, I'd ask you to look at this e-mail from Todd Eads to Bachar Hamad.

A. That was July 2015, yes.

Q. Right. And then up above, it looks like it was forwarded from Bachar to Lee Levin and yourself; do you see that?

A. Yes.

Q. And Lee Levin is whom again?

A. He was our lawyer.

Q. Do you know what Todd Eads is asking your brother here about?

A. He's asking for a set up of a call.

Q. Who is MCM?

A. I have no clue.

Q. Do you know what Crystal's is?

A. I think that's Crystal mall.

Q. Is that a mall in Vegas?

A. Yes.

Q. And why did Bachar send this to

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 you and Lee Levin in July of '15?

3 A. I don't know.

4 Q. Were you trying to get the lease
5 back to Simon at this point and get out
6 from underneath it and the obligation
7 and guaranty that was on the lease?

8 A. No. We never send -- we never
9 did. I don't remember.

10 Q. All right. So you don't
11 remember if you were trying to, in July
12 of 2015, get out from underneath the
13 lease?

14 A. I don't think we did, but I can
15 -- I don't remember, but I don't think
16 we did. And as far as -- can I make a
17 comment?

18 THE ARBITRATOR: No. Make a
19 note in your pad.

20 THE WITNESS: Okay.

21 Q. How many times did Sarah request
22 rent reductions from Simon during its
23 tenure under the lease approximately?

24 A. Twice.

25 Q. When were those times?

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 A. Based on our accounting, I
3 think, if I remember.

4 Q. But can you point to a specific
5 document or documents that, you know,
6 set forth the amount that Sarah did, in
7 fact, purchase from Forall?

8 A. I know the last season, 2013
9 order, was done by Alfonso Entebi, so
10 there was no way -- and I was -- that
11 was for the fall, winter season.

12 So typically, we do the order
13 for the spring -- I'm sorry -- for the
14 -- the fall, winter.

15 Q. I asked you if there was a
16 document you could point to.

17 A. Your document. The table you
18 showed me.

19 Q. Okay. Thank you. You said you
20 sold inventory when Italnord took over
21 the store in the back of the store, is
22 that right, the inventory that you had?

23 A. Yes. Absolutely.

24 Q. Had you carved out Sarah's
25 inventory of Pal Zileri products out of

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 A. I don't remember the dates.

3 Q. Did you ever receive any rent
4 reductions?

5 A. No.

6 Q. Who negotiated the lease on
7 behalf of Simon principally?

8 A. My brother.

9 Q. Were you involved in that
10 process?

11 A. No.

12 Q. Do you recall seeing that chart
13 yesterday that Luca Spano was
14 testifying about that he created, and
15 it stated that Sarah had purchased over
16 2.2 million dollars of product during
17 its 2011 to 2013 operation of the
18 store; do you recall that?

19 A. Recall seeing it.

20 Q. And then you testified that
21 there was no way that Sarah purchased
22 that amount?

23 A. As far as I know.

24 Q. What were you basing that
25 testimony on?

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 the asset purchase agreement with
3 Italnord?

4 A. I didn't hear you. Say it
5 again.

6 Q. Did you carve the inventory out
7 of the asset purchase agreement?

8 A. What do you mean?

9 Q. Did you specifically exclude it
10 such that you could sell it?

11 A. It was a left-over inventory.
12 We took it out and sold it. Yeah. Our
13 inventory.

14 Q. Okay.

15 THE ARBITRATOR: Sorry. I
16 think yesterday we looked at that
17 agreement. It was little F, as I
18 recall.

19 MR. BROWN: Right. Thank
20 you. Sorry. My computer is
21 frozen, it seems. That's not
22 good.

23 Q. I believe yesterday you
24 testified that there was issues with
25 products being delivered by Forall, and

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CROSS-EXAMINATION OF DR. A. HAMAD
 you were referring to an inventory
 e-mail from Ghanem Musalimi, who worked
 for Sarah to Luca Spano, right, do you
 recall that testimony?

A. Yes, I do.

Q. And I'm specifically referring
 to Exhibit 15. Mr. Lewis had shown you
 Exhibit 15.

MR. BROWN: This is
 measurably more difficult remote.
 I apologize.

Okay.

Q. Doctor, do you recall looking at
 this e-mail yesterday, updated
 inventory from January '12?

A. Yeah.

Q. Okay. Do you know if this issue
 was resolved by Luca?

A. I don't remember, but it was an
 issue at that time.

Q. Okay. Okay. I'd like you to
 look at this document, which is
 Claimant's 3087. I'll give you an
 exhibit number in a second.

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MR. BROWN: Mr. Farber, I
 think I'm going to request a
 ten-minute break. I do
 apologize. I'm a little
 plumished with some of these
 exhibits, and I want to get a
 little better order without
 waiting anyone's time. Can I
 request that?

THE ARBITRATOR: All right.
 Why don't -- we'll give you that
 courtesy. Guys, let's take a
 ten-minute break, and maybe we'll
 shorten up our mid morning break
 later because we've only been at
 it a little less than an hour.
 So, guys, let's pause for 10
 minutes.

MR. BROWN: Thank you so
 much.

(Whereupon, a recess was
 taken at this time.)

THE ARBITRATOR: Mr. Brown,
 why don't you proceed.

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CROSS-EXAMINATION OF DR. A. HAMAD
 Exhibit 354 in the Joint Exhibit list.

You see here where Luca says on
 February 15, 2012, "Dear all, yesterday
 I met with Ghanem at the Pal Zileri in
 Vegas. He confirms with me that the
 inventory taken for A/W2011 matches
 invoices so forth. The spreadsheet
 sent by Gina is accurate and should be
 considered as final for the season"; do
 you see that?

A. Yes.

Q. And Gina -- do you know who
 Gina is?

A. No, I don't.

Q. Do you see her name down here,
 Gina Sedlarcik at Palma Settimi Inc.
 dot com?

A. Yes.

Q. Palma Settimi handled the back
 office for Forall?

A. Okay.

Q. Do you know no that or --

A. No, I don't. I'm taking your
 word.

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. Dr. Hamad, did you ever work in
 the Pal Zileri store at the Forum
 shops?

A. Did I ever work?

Q. Yeah.

A. No, I didn't.

Q. Did you live in Chicago in all
 times that you had the store or your
 wife had the store down in Las Vegas?

A. Yes.

Q. How about Bachar, did he ever
 work in the store?

A. I don't believe so.

Q. How about his wife?

A. I don't believe so.

Q. Did they reside up near Chicago
 at all times that Sarah operated the
 store?

A. Yes.

Q. All right. I'm going to show
 you what's been marked Exhibit 321, the
 license agreement. Have you seen this
 document before?

A. Yes, I did.

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. You're familiar with it?

A. Yes.

Q. Were you -- was Sarah represented by counsel when it entered into this agreement?

A. Yes.

Q. Who -- who was that?

A. Lee Levin.

Q. And he is based out of Chicago?

A. I believe so.

Q. Did you refer to this document when you claimed that the construction cost were not reimbursed to Sarah in a proper manner?

A. I refer to that discount, yes.

Q. Okay. Do you -- how did you determine that you -- that Sarah was still owed construction money by Forall?

A. At the end there was \$38,000 left supposed to be paid for the last season, but the last season was taken by Alfonso so it was deferred to him.

Q. And was that \$38,000 number, was

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CROSS-EXAMINATION OF DR. A. HAMAD

that calculated by Luca Spano?

A. I don't remember who calculated it.

Q. Did you calculate it?

A. I know there was \$38,000 left.

Q. But did you calculate that amount? Did you track the construction cost and the reimbursement that were given against product by Forall?

A. I believe so.

Q. You did?

A. I didn't calculate it, but I believe that was the number left from the construction.

Q. Do you have any documents that support this \$38,000 credit that you believe Sarah was owed when you turned the store over to Italnord?

A. It was a discussion with Luca.

THE ARBITRATOR: He didn't ask you about discussions. He asked you if you had any documents.

A. There was some exchange e-mails.

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. By whom?

A. By Luca and Italnord, if -- I believe, if I'm not mistaken.

Q. Can you tell me specifically when that was?

A. At that time or before or during the time we had discussions with Italnord and Luca prior to taking over the store.

Q. So isn't it true that Luca calculated that \$38,000 figure?

A. It was joint calculation between him and my brother, if I'm not mistaken.

Q. But not you?

A. I was a part of the discussion.

Q. Did you do the calculation? Did you --

A. No, I didn't.

Q. You were a guarantor to these obligations in the license agreement by Sarah; isn't that correct?

A. Yes.

Q. Do you see your wife's signature

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CROSS-EXAMINATION OF DR. A. HAMAD

on this page?

A. Yes.

Q. Which signature is it?

A. Suhad Albasha.

Q. Right here where I have my cursor?

A. Yes.

Q. Do you recognize this document that's entitled "Guaranty"?

A. Yes.

Q. And is this the guaranty you executed guaranteeing the obligation of Sarah to Forall?

A. Yes.

Q. And do you see your name and signature on this page?

A. Why.

Q. And is that your Social Security next to your name here?

A. Yes.

Q. And is your wife's signature on this page?

A. Yes.

Q. And how about your brother's, do

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 you recognize his signature here?

3 A. That's probably his signature,
4 yes.

5 Q. Now, you said you didn't
6 negotiate or sign the lease by Sarah to
7 Forum shops; is that correct?

8 A. Yes.

9 Q. Do you know if your wife signed
10 that document as a member of Sarah LLC?

11 A. I think she did.

12 Q. Okay. I'm putting another
13 exhibit. It's the management agreement
14 between Italnord and Sarah. Just bear
15 with me on an exhibit number. I
16 apologize. It's Exhibit Number 7. My
17 apologies.

18 Dr. Hamad, do you recognize this
19 document?

20 A. Yes.

21 Q. And yesterday your counsel was
22 stepping you through the asset purchase
23 agreement with Italnord; isn't that
24 correct; do you recall that testimony?

25 A. Yes.

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 was a novation or a relinquishment of
3 certain rights when Pal Zileri -- I
4 mean when the Pal Zileri store was
5 managed by Italnord in September of
6 '13?

7 A. What do you mean?

8 Q. Let's go at this a different
9 way. I apologize.

10 So you see under Section 2.1 it
11 says, "This agreement shall be
12 effective from the effective date and
13 shall continue until January 31, 2015,
14 the expiration date"?

15 A. Yes.

16 Q. Did you understand when this
17 document was executed by the parties
18 that Italnord was coming in for a
19 period of time to manage the store, but
20 Sarah was continuing to be on the lease
21 and have responsibility under the
22 license agreement with Forall?

23 A. Sarah LLC will be responsibility
24 for the lease [sic]. Italnord will
25 come and manage and build credit, until

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 Q. Did this management agreement
3 accompany that asset purchase agreement
4 at the time that Sarah engaged the
5 management services of Italnord?

6 A. Repeat the question.

7 Q. Did this -- was this management
8 agreement part of the transition of the
9 store from Sarah to Italnord during the
10 management term?

11 A. Yes.

12 Q. Okay. And do you see -- is it
13 your testimony that there was some sort
14 of novation or a relinquishment of
15 rights --

16 MR. LEWIS: Objection.

17 Q. -- as a result of management?

18 THE ARBITRATOR: Let him
19 finish the question, Mr. Lewis.

20 Why don't you start again from
21 the start.

22 Q. Okay. Sir, are you aware of the
23 fact that in this lawsuit that was
24 commenced by Sarah and yourself and the
25 other parties that you claim that there

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 they have enough credit, so they can
3 take over the lease.

4 THE ARBITRATOR: Right. But
5 the second part of his question
6 is: Did you understand that
7 Sarah still had responsibility
8 under the license agreement?

9 THE WITNESS: For the lease,
10 yes.

11 Q. And what about for the license
12 agreement with Forall?

13 A. My understanding is he created
14 his own license purchasing agreement
15 with Forall.

16 THE ARBITRATOR: Okay. But
17 he didn't ask you about what he
18 did. He asked you if your
19 understanding was that Sarah
20 still had responsibility
21 --

22 THE WITNESS: No.
23 Absolutely not.

24 Q. And what was that based on?

25 A. Based on the asset purchase

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CROSS-EXAMINATION OF DR. A. HAMAD
 agreement, he bought the license
 purchasing agreement, and based on the
 fact that he created his own license
 purchasing agreement to operate in the
 store.

Q. Were you -- were you ever
 provided with a copy of that purported
 license agreement between Italnord and
 Forall?

A. No. But I was told he has one.

Q. But you never saw it?

A. No.

Q. And were there any -- was -- is
 there anything in this agreement that
 says that the license agreement is
 terminated by Forall in this management
 agreement or the asset purchase
 agreement?

A. In the asset purchase agreement,
 yes. Not by Forall, but there was --
 it was an asset purchase agreement.

Q. But Forall wasn't party to the
 asset purchase agreement?

A. Forall facilitated both

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Yeah.

Q. And this agreement, who is it
 between?

A. Italnord and Sarah LLC.

Q. And I want to take you to
 Section 1.1 B, little two. This right
 here, okay?

Do you see this says, "A license
 to use during the term, all contracts
 of seller utilizing" --

A. What is this?

Q. I'm just reading section two
 here.

A. Okay.

Q. "A license to use during the
 term as defined in Section 4.4 of this
 agreement, all contracts of seller
 utilizing in the operation of the
 business, which were exclusive to
 seller, which are assignable by seller
 and accepted by purchaser, included but
 not limited to the seller's license and
 retail operation agreement with Forall
 Inc., Forall, which provides seller's

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CROSS-EXAMINATION OF DR. A. HAMAD
 agreements.

Q. But was it a party or signatory
 to that agreement?

A. They facilitate both agreements.

THE ARBITRATOR: He didn't
 ask you that. He asked you if
 knew if Forall was a party to the
 agreement.

THE WITNESS: It was --
 Honor, they facilitated. They
 were part of it. They were aware
 of it.

Q. Okay. Let me show you this
 document here at the top. This
 management agreement, who is this
 agreement between?

A. Italnord and Sarah LLC.

Q. Okay. All right. And this is a
 copy of the asset purchase agreement.
 Okay. And that is Exhibit 6, I
 apologize.

Have you seen -- you were
 testifying about this document
 yesterday, right?

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CROSS-EXAMINATION OF DR. A. HAMAD

right to sell goods with the Pal Zileri
 name and utilize that name in the
 operations and advertising," and then
 it defines parenthetically the license
 agreement. Okay.

So the arrangement between
 Italnord and Sarah was to license the
 license agreement for the store; isn't
 that right?

A. License and license purchasing
 agreement.

Q. Right. And does it say -- what
 was the term? What was that referring
 to? What was your understanding that?

A. Our understanding that he took
 over the license agreement for the
 store and a license purchasing
 agreement.

Q. But it was a license, it wasn't
 a transfer, right?

A. He created his own license. Our
 license stopped. There was no
 enforcement. It was transferred to
 him.

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 Q. Does that say this here in this
3 agreement anywhere?

4 A. It says, "License agreement,"
5 our interpretations for both of them --

6 THE ARBITRATOR: Dr. Hamad,

7 hang on a minute. Do you know if

8 there is any document that was

9 signed by Forall which said that

10 the license agreement between

11 Forall and Sarah stopped?

12 THE WITNESS: Are you asking
13 me that question, Your Honor?

14 THE ARBITRATOR: Do you know
15 if there is any document signed
16 by Forall which said that the
17 license agreement between Forall
18 and Sarah stopped?

19 THE WITNESS: Are you asking
20 me that question?

21 THE ARBITRATOR: I am, Dr.

22 Hamad. You can call me Mr.

23 Farber. The question simply is,

24 you just testified that the

25 agreement between Forall and

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 him to continue to testify or
3 not?

4 MR. LEWIS: Well, it's
5 certainly his privilege to waive,
6 but I want to advise him about
7 the consequences of that.

8 So if you get into
9 conversations you had with your
10 prior attorneys, then Mr. Brown
11 can probe those conversations and
12 the privilege would be waived. I
13 want to just remind you, the
14 question is whether you're aware
15 of a writing where Forall
16 released Sarah from the license
17 agreement.

18 THE ARBITRATOR: That is
19 correct. So Mr. Lewis is quite
20 right, I asked about a writing
21 and you were beginning to respond
22 about conversations with your
23 lawyer.

24 And Dr. Hamad, I cut you off
25 because I wanted to be sure you

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 Sarah stopped. And my question
3 is: Do you know of any writing
4 that says that the license
5 agreement between Sarah and
6 Forall stopped?

7 THE WITNESS: Those two
8 agreements were approved by
9 Forall, and my lawyer told me --

10 THE ARBITRATOR: Hang on a
11 minute. Look, this is up to Mr.
12 Lewis now. The law says that you
13 don't have to testify about
14 conversations with your lawyer,
15 but you are free to if Mr. Lewis
16 allows you to testify about
17 conversations with your lawyer.
18 Then Mr. Brown is going to be
19 free to ask questions about those
20 conversations.

21 So before you testify about
22 anything that your lawyer had
23 with you in the nature of
24 conversations --

25 Mr. Lewis, are you allowing

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 were aware of your rights in that
3 regard.

4 THE WITNESS: Okay. Thank
5 you, sir.

6 THE ARBITRATOR: Okay. So
7 my question then is: Do you know
8 of a writing that specifically
9 says that the agreement, the
10 license agreement, between Sarah
11 and Forall stopped?

12 THE WITNESS: This is the
13 only document I have.

14 THE ARBITRATOR: Okay.

15 THE WITNESS: No.

16 THE ARBITRATOR: Okay.
17 Thank you. All right. Go ahead,
18 Mr. Brown.

19 Q. Okay. Thank you, sir. Under
20 Section 1.2, I'm sorry, 1.3, "Purchase
21 price"; do you see this?

22 A. Yes.

23 Q. Did Sarah receive \$140,000
24 payment from Italnord to -- for the
25 management term?

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Yes.

Q. And Section 1.4, the lease deposit it says, "In addition to the purchase price, purchaser shall provide seller were a refundable deposit equal to \$65,000 representing one month's rent of the premises of the lease"; do you see that?

A. \$65,000, yes, he did.

Q. And so during the term of the management agreement by Italnord, did Sarah or any of Sarah's owners or people, the guarantors, have to pay rent during that intervening period of time?

A. No, I don't remember.

Q. Is it no or you don't remember?

A. At the end of the agreement, he stayed an extra month, Italnord, he was supposed to leave in January 31st.

THE ARBITRATOR: Hang on.

Let's go back to the question, and we'll try to get an answer.

Can you restate the

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Not in my hands, but I know the \$38,000 was not paid.

Q. But you don't know what -- did you have a closing statement or binder for this?

A. I don't have it now, but I know he did not pay the \$38,000.

Q. Would your attorney have let you hand over the management of the store without receipts of this payment?

MR. LEWIS: Objection.

THE ARBITRATOR: What's the basis for the objection?

MR. LEWIS: Privileged and speculation.

THE ARBITRATOR: Sustained on the basis of privilege.

MR. BROWN: Well, I'm calling for a hypothetical, I suppose.

Q. Would -- who received the checks for -- from Italnord when this management agreement was entered into?

A. I don't remember, honestly.

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CROSS-EXAMINATION OF DR. A. HAMAD question?

Q. During the term that Italnord managed the store, did Sarah or any of its guarantors have to pay the rent?

A. No.

Q. And you see on 1.4 B, "Pay to seller \$38,000 which is due from Forall to seller, the Forall payment.

Purchaser shall seek reimbursement of the Forall payment from Forall"; do you see that?

A. Yes.

Q. Did Italnord pay to Sarah or any of its guarantors \$38,000 at the commencement of the management agreement?

A. I don't recall. I don't remember. I don't think he did.

Q. What are you basing that on?

A. Based on the only payment of \$140,000.

Q. How do you -- do you have documents that you're referring to or are aware of that reference that?

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CROSS-EXAMINATION OF DR. A. HAMAD

Q. But you know there was -- that's \$140,000 was paid?

A. Absolutely. I know he paid the \$140,000, but I don't remember at all paying the \$38,000.

Q. Okay. Was there any follow up to Italnord that he -- he was in default of this agreement by not paying that amount that you recall?

A. There were repeated efforts with Forall and him to collect the money, but I don't remember exactly when, I mean, just right after.

Q. Can you refer me to any documents evidencing that?

A. I think there were conversations throughout.

THE ARBITRATOR: So Dr. Hamad, why did Forall tell you that in these conversations that they didn't want to pay you the \$38,000?

THE WITNESS: Because it was the last season of our management

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 agreement, Honor, and they said
3 it's not due. That's why.

4 THE ARBITRATOR: And why did
5 this agreement which Mr. Brown
6 has now put up on the screen say
7 that you were going to get paid
8 \$38,000 in that little B over
9 there, 1.4 B, from Italnord? Why
10 would Italnord pay that same
11 number to you?

12 THE WITNESS: Because that
13 was the last amount of build out
14 of the construction.

15 THE ARBITRATOR: So why is
16 the obligation to pay it shifted
17 from Forall to Italnord?

18 THE WITNESS: And this is
19 why we were wondering. We didn't
20 know. And second, because he was
21 occupying the space in the last
22 season of our -- I mean after
23 our --

24 THE ARBITRATOR: Hang on.
25 I'm not understanding this. This

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 it, Honor, and it shifted to him,
3 so it was forced on us. I'm
4 being honest with you.

5 THE ARBITRATOR: You mean
6 Italnord -- I thought you said
7 you didn't remember if they paid
8 it or not. Now you're saying --

9 THE WITNESS: They did not
10 pay it. I'm telling you they did
11 not pay it. But the way it
12 happened is it shifted to him and
13 it was supposed to be given to
14 him later on; that's how it
15 worked. They were supposed to
16 pay us some money and they were
17 supposed to give him a credit for
18 \$38,000.

19 THE ARBITRATOR: Who is
20 "they"?

21 THE WITNESS: Forall. So
22 later on they give him a credit
23 for \$38,000, and the gentleman
24 never paid the \$38,000 to us.

25 THE ARBITRATOR: So you know

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 is a document that you and
3 Italnord signed.

4 THE WITNESS: Right.

5 THE ARBITRATOR: Are you
6 tell me that you went ahead and
7 you signed a document that says
8 you -- by "you," I mean Sarah
9 signed. You signed a document
10 that said Italnord is going to
11 pay you \$38,000 and you didn't
12 know the reason for that?

13 THE WITNESS: No. I knew
14 the reason is the build out
15 construction of the store left
16 over.

17 THE ARBITRATOR: So it goes
18 back to my prior question. If
19 you entered into an agreement
20 that Italnord had to pay the
21 \$38,000, why is it that Forall is
22 still responsible for the
23 \$38,000? That's what I'm trying
24 to understand.

25 THE WITNESS: He didn't pay

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 that Forall did give a credit for
3 \$38,000, but they gave it to
4 Italnord, right?

5 THE WITNESS: Yes. My
6 understanding, that's what
7 happened.

8 THE ARBITRATOR: So, Dr.
9 Hamad, I'm trying to understand
10 this. Mr. Lewis and Mr. Shah, on
11 your behalf, have asserted a
12 claim here against Forall for
13 \$38,000 on the build out, and I
14 think you just told me that they
15 gave a credit to Italnord for
16 that same amount, except that
17 Italnord never paid you.

18 THE WITNESS: Right.

19 THE ARBITRATOR: Okay. All
20 right. Go ahead, Counselor.
21 Q. So it's your testimony, though,
22 that this agreement was put in place
23 and Italnord took over management of
24 the store, but they never paid you the
25 \$38,000 despite what it's saying that

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 it was an obligation to be done under
3 1.4 here?

4 A. The obligation was for Forall to
5 pay us. But they shifted the game and
6 they made -- they made Italnord
7 responsible for it.

8 Q. That's not my question. My
9 question is: Your testimony today
10 under oath is that this \$38,000 was not
11 received by Sarah or any of its
12 guarantors at the time of the
13 management agreement, even though it's
14 a condition under this agreement here?

15 A. Yes.

16 Q. Did you ever seek any -- to
17 enforce this provision with Italnord?

18 A. We talked to both of them,
19 Forall and Italnord.

20 Q. Did you ever peruse any legal
21 action against Italnord on the basis of
22 the nonpayment of \$38,000?

23 A. No.

24 Q. Did you -- you were present for
25 Luca Spano's testimony yesterday,

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 right, when he was going through his
3 spreadsheet where in he calculated the
4 \$38,000 construction credit?

5 A. Yes.

6 Q. And you saw his multi colored
7 exhibit where he had done those
8 calculations, right?

9 A. I remember vaguely, yes.

10 Q. And do you recall him state that
11 he -- that the construction credits
12 given to Sarah were actually \$512,000,
13 whereas the -- half of the construction
14 totaled \$474,000?

15 A. I have to take a look at it
16 again, but -- again, I have to take a
17 look.

18 Q. Okay. And isn't it true that
19 Forall actually credited Sarah more
20 money than 50 percent of the
21 construction build out cost?

22 A. No.

23 Q. You, yourself, ever compile
24 those calculations and run numbers
25 related to the construction costs and

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 the credits that were due from Forall?

3 A. At that time, the only thing
4 left is the \$38,000. That's it.

5 Q. And isn't that -- didn't that
6 number come from Luca and not yourself
7 or anyone at Sarah?

8 A. If you go back to his sheet,
9 those were orders. Again, I -- he made
10 his numbers. I don't know. I'm
11 telling you the only thing left is
12 \$38,000.

13 Q. Okay. But you didn't have your
14 own independent calculation for that --
15 that credit due, did you?

16 A. At that time we were calculating
17 everything with him and there was a
18 \$38,000 left.

19 Q. Okay. I'm going to Section 1.7.
20 It says, "No assumptions of
21 obligations," this is in the asset
22 purchase agreement, and highlighting
23 this last sentence that says,
24 "Notwithstanding anything in this
25 agreement to the contrary, purchaser is

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 not assuming the lease or the license
3 agreement in full; it is only assuming
4 seller's performance and payment
5 obligations during the term, as defined
6 in Section 4.4 of this agreement under
7 the lease, license agreement, and other
8 operational contracts listed on
9 Schedule 1.1 little C, Roman numeral
10 four"; do you see that?

11 A. Yes.

12 Q. Isn't this provision stating
13 that Italnord is only responsible
14 during the term for both the lease and
15 the license agreement, but it's not
16 assuming it -- either of those
17 agreements from Sarah?

18 A. To my understanding, the lease
19 only is not assuming.

20 Q. Okay. And are you basing that
21 on this language or some other
22 document?

23 A. On the previous language. On
24 the previous item you showed me.

25 Q. Within the same asset purchase

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 agreement?

3 A. I think so.

4 Q. What provision, specifically?

5 A. The one you showed me earlier,
6 that he's assuming the license and
7 everything.

8 Q. Okay. So that section 1.1 B,
9 little two, right, that's what you're
10 referring to here? A license to you --

11 A. I think so.

12 THE ARBITRATOR: Dr. Hamad,
13 let me just try to ask you this
14 again, because I'm -- I'm trying
15 to understand your testimony in
16 this regard.

17 Mr. Brown, could you just go
18 back to the \$38,000 clause in
19 this agreement?

20 MR. BROWN: Right here.

21 Yup.

22 THE ARBITRATOR: Look, I'm
23 going to ask you in plain -- not
24 lawyer's language, but plain
25 language. I mean, you are coming

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 And I see here a document
3 that Sarah signed saying that the
4 money is supposed to come from
5 Italnord, and they just never
6 paid. So could you explain that,
7 because I'm trying to understand
8 it?

9 THE WITNESS: Okay. Can you
10 go back? When was this document
11 signed?

12 THE ARBITRATOR: Looks like
13 September 10, '13.

14 THE WITNESS: And then when
15 did Italnord move in?

16 THE ARBITRATOR: Well, you
17 would know better than me.

18 THE WITNESS: They moved in
19 around September 9th or 10th,
20 Honor.

21 THE ARBITRATOR: Okay.

22 THE WITNESS: So there was
23 no way, really, at that point to
24 try to collect the money right
25 away from him. So he was already

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 to me through your lawyer,
3 lawyers, Mr. Lewis and Mr. Shah,
4 and you're asking me to direct
5 Forall to pay you the \$38,000 for
6 the unpaid construction costs.

7 And yet, you just told me
8 that the \$38,000 was credited by
9 Forall to Italnord and this 1.4 B
10 clearly says that Italnord is
11 supposed to pay you the \$38,000
12 and they didn't.

13 So -- and you're also
14 telling me that you never got
15 paid the \$38,000 at the closing.
16 I don't know why. And you're
17 also telling me that you never
18 went against Italnord to try to
19 get the \$38,000.

20 Can you explain to me, from
21 your understanding, why I should
22 order Forall to pay the \$38,000
23 again when you've just told me
24 they gave the credit for that
25 amount to Italnord?

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 in the store, if I'm not
3 mistaken.

4 So we were good citizens
5 trying to facilitate everything
6 in order for the store to keep
7 moving forward. It's not about
8 the money. \$38,000 is \$38,000,
9 but the principle that we were
10 really good citizens.

11 We did everything we can to
12 help the store move forward and
13 signed the agreement at the time
14 or just a day or two before or
15 after, I can't remember, but at
16 the time when he moved in he
17 promised to pay it. It was
18 shifted and never paid it.

19 THE ARBITRATOR: When you
20 say, "he promised to pay," you
21 mean Entebi, right?

22 THE WITNESS: Right. So we
23 were hooked in the middle of
24 this. They shifted this to this,
25 and they shifted this to that,

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 and we got caught in the middle
3 of this. We were good citizens
4 trying to help the store move
5 forward.

6 THE ARBITRATOR: Let me ask
7 this one final time and then I'll
8 leave it alone, but you're
9 telling me that Forall already
10 paid it because they gave a
11 credit to Mr. Entebi, so what
12 reason should I have to agree
13 with what Mr. Lewis is arguing
14 for on your behalf that I should
15 now order Forall to pay it again?

16 THE WITNESS: It was almost,
17 like, forced on us to do this.

18 So we had no choice but to move
19 forward with the store, so I
20 apologize to you, Honor, however,
21 what was promised was not done.

22 THE ARBITRATOR: All right.
23 Let me ask you something else,
24 what Mr. Brown is asking you
25 about right now.

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 license agreement, and this deal.

3 So I see a document and it
4 reads that Entebi and Italnord
5 are not accepting whatever
6 obligations Sarah has to Forall,
7 except for the limiting time
8 period that it's going to be this
9 deal with -- and yet you're
10 telling me that that's not the
11 deal. That the deal was -- let
12 me finish.

13 Your testimony as I heard
14 was that the deal is: They took
15 -- Sarah no longer had any
16 obligations except under the
17 lease, you say they still did,
18 but under the license agreement,
19 you say they had nothing left.

20 So tell me why Sarah signed
21 something that says that the only
22 thing that they're giving away to
23 Italnord is just for this time
24 period under the license
25 agreement, but you're telling me

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 Mr. Brown, could you flip
3 back to 1.7?

4 MR. BROWN: Certainly.

5 THE ARBITRATOR: So I'm
6 going to ask you the same kind of
7 question, and it relates to the
8 last questions that Mr. Brown
9 asked.

10 So I read a document and the
11 document is signed by you, and
12 signed by Entebi -- well, not
13 really by Entebi, by his company,
14 Italnord, and not really by you,
15 but by Sarah, but that's what I
16 mean, those two parties.

17 And it says, "Purchaser,
18 that's Italnord, is not assuming
19 the lease or the license
20 agreement in full. It's only
21 assuming Sarah's performance and
22 obligations during the term,"
23 that's this time period which I
24 think was roughly scheduled at
25 like 18 months under the lease,

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 no, it's for the whole remainder
3 of the license agreement; what am
4 I supposed to understand from
5 this?

6 THE WITNESS: Honor, what
7 happened is they -- they took
8 over the management agreement.
9 He didn't have enough credit to
10 build for the lease, so it was a
11 trial period for him to build up
12 his credit for the lease during
13 that time.

14 And our understanding and my
15 understanding that our license
16 purchasing agreement was not
17 enforceable, whatsoever, during
18 that period of time, and he had a
19 new license purchasing agreement
20 with Forall. So that's what I'm
21 trying to explain.

22 THE ARBITRATOR: Right.
23 That's the document we're looking
24 at now.

25 THE WITNESS: Yeah. So

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 that's what I'm trying to
3 explain. So the license
4 purchasing agreement during
5 Entebi's operation was never
6 enforced on Sarah.

7 Sarah had -- did not buy --
8 did not put any liability,
9 whatsoever, during that period of
10 time for the license purchasing
11 agreement.

12 THE ARBITRATOR: I think you
13 defined it well. You called it a
14 "trial period," and I think
15 that's a good -- a good
16 definition.

17 THE WITNESS: Right.

18 THE ARBITRATOR: So I
19 understand Sarah didn't buy
20 anything during the trial period,
21 because it wasn't running the
22 store anymore, so it didn't buy
23 anything.

24 But what I'm being asked in
25 this case by Forall is to enforce

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 during Entebi's period or during
3 Forall's period to really perform
4 on the license purchasing
5 agreement.

6 And the unfortunate part is
7 the store did miserably and
8 didn't perform, so there was no
9 way to go back and perform on a
10 license purchasing agreement when
11 everybody failed. So that's what
12 I'm trying to communicate to you,
13 is that it's an awkward position.

14 Everybody tried. Everybody
15 did their best. But
16 unfortunately, the product is not
17 sellable and the store did poorly
18 and there was no able to close it
19 [sic].

20 The --

21 THE ARBITRATOR: All right.
22 Look, I thank you for your
23 explanation. I appreciate it.

24 Mr. Brown, thank you for
25 letting me interrupt you with

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 a claim that Forall has for after
3 the trial period, and what I'm
4 trying to understand is your
5 position, what it's based on,
6 that under the license agreement
7 that you had no further -- Sarah
8 had no further obligation at all
9 to Forall. And I'm trying to
10 understand the basis for it when
11 you signed 1.7. That's what I'm
12 trying to understand.

13 THE WITNESS: Honor, the
14 basis for it again, is -- it was
15 a trial -- it was supposed to
16 take over. He didn't take over.
17 Forall took over. And it was
18 still -- the license purchasing
19 agreement was not enforced.

20 So it was three years in a
21 row, and even during our time,
22 the two years, the license
23 purchasing agreement was never
24 fully enforced. Sarah was not
25 requested, whatsoever, during --

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 these questions. I was just
3 trying to understand a little
4 better the document during the
5 course of your examination. So
6 why don't you proceed, sir?

7 MR. BROWN: Thank you, Your
8 Honor -- Mr. Farber.

9 Q. Dr. Hamad, before I do that,
10 just bear with me one more minute.
11 This is -- I'm going to the signature
12 page of the asset purchase agreement.

13 THE WITNESS: Honor.

14 THE ARBITRATOR: Yes. What
15 is it, Dr. Hamad?

16 THE WITNESS: Can I make one
17 more comment?

18 THE ARBITRATOR: Sure. Go
19 ahead.

20 THE WITNESS: During that
21 time also, Simon, as I said, was
22 very nervous about the store and
23 the performance. The sales were
24 dropping left and right. The --
25 the sales were decreased from

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CROSS-EXAMINATION OF DR. A. HAMAD
almost \$160,000 to \$63,000.

And Entebi and Italnord did poorly in management and sales. Forall didn't do much, so that's why there no base, whatsoever, in my opinion about enforcing the license purchasing agreement, because the store didn't do good and Simon wanted the store back.

THE ARBITRATOR: Okay. We're going to let your lawyers peruse the arguments in question on that one, but I see what you're saying and thank you.

Mr Brown, you can proceed.

Q. Dr. Hamad, do you recognize the signature under Sarah here?

A. That's B Hamad.

Q. Is that your brother?

A. Yes.

Q. Is that his signature?

A. Yes.

Q. And it looks like he signed here as president of Sarah LLC; is that

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CROSS-EXAMINATION OF DR. A. HAMAD

MR. LEWIS: Objection.

Q. -- relative of the management of the store by Italnord?

THE ARBITRATOR: Mr. Lewis, what's the objection?

MR. LEWIS: I'm not sure Dr. Hamad would have visibility into what agreements Forall entered into.

THE ARBITRATOR: Overruled. Then he'll say he doesn't know.

If you know you can answer, Dr. Hamad.

THE WITNESS: No, I don't know.

MR. BROWN: Okay.

Q. Is this your wife's signature at the end of the document here?

A. Yes.

Q. Do you see Section 3, "During the term of the management agreement, only, Forall shall look to the manager and hold the manager responsible for the performance of all obligations

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CROSS-EXAMINATION OF DR. A. HAMAD
right?

A. Yes.

Q. I'm going back to the stipulation and consent agreement that was executed in September of '13 between Sarah and Forall.

And do you recognize this, Doctor?

A. Yes.

MR. SHAH: Mr. Brown, do you have an exhibit number?

MR. BROWN: That's what I'm working on. It is Exhibit 9.

Q. Okay. So isn't this the only agreement that Forall entered into at the time of the Italnord management?

A. What is this again? What document is this?

Q. This is the consent and stipulation agreement by -- between Forall and Sarah of September 13, 2013. And my question is: Isn't this the only agreement that Forall entered into at this time --

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CROSS-EXAMINATION OF DR. A. HAMAD

under the license agreement. To the extent the management agreement is terminated, at such time the company shall again be responsible for the performance of all obligations under the license agreement"; do you see that?

A. Yes.

Q. And isn't this clear language stated that at the time in September '13 Forall intended to hold Sarah responsible for the license agreement if the management term by Italnord was terminated for any reason?

MR. LEWIS: Objection.

Calling for a legal conclusion.

THE ARBITRATOR: I'll take it as just his understanding without a legal conclusion. Overruled.

THE WITNESS: I'm reading the document.

THE ARBITRATOR: All right.

A. I am not a lawyer, so I cannot

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 do interpretation of this [sic].

3 Q. Do you have an understanding as
4 a medical doctor or any -- or even
5 someone with a fair amount of
6 education, what this provision is
7 stating?

8 A. What do you mean?

9 Q. Do you know what this says?

10 MR. LEWIS: Mr. Brown, can
11 you restate the question? You're
12 asking Dr. Hamad to read it. I'm
13 not sure what do you mean by what
14 this says.

15 THE ARBITRATOR: Counselor,
16 also would you just remind me the
17 exhibit number here?

18 MR. BROWN: Exhibit 9, Mr.
19 Farber.

20 THE ARBITRATOR: I couldn't
21 hear you. Say it again.

22 MR. BROWN: Joint Exhibit 9.

23 THE ARBITRATOR: Okay.

24 MR. BROWN: And this was in
25 many of the pleadings.

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 agreement"; do you see that?

3 A. Yes.

4 Q. Do you understand that to be a
5 representation by Sarah that Forall
6 relied upon in the execution of this
7 consent and stipulation?

8 A. Say it again.

9 Q. Having stated this in this
10 agreement, do you believe that Forall
11 was justified in relying upon this
12 representation?

13 A. I believe so.

14 Q. And then Section 7 says, "As
15 specifically set forth herein, nothing
16 shall act as to waive, limit, or
17 otherwise alter any obligation or
18 liability that the company and/or its
19 principals, owners, members and/or
20 guarantors, are subject to arising from
21 the lease and retail operator
22 agreement, the lease agreement and/or
23 any guaranty undertaking or promise
24 thereunder"; do you see that?

25 A. Yes.

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 THE ARBITRATOR: Right. I
3 certainly read it before. Why
4 don't you restate your question?

5 Q. Mr. Hamad, can you read for
6 everyone the sentence that I'm
7 highlighting right now? Can you read
8 that for us out loud?

9 A. "To the extent that management
10 agreement is terminated, at such time
11 the company shall again be responsible
12 for the performance of all obligations
13 under the license agreement."

14 Q. Thank you. Do you know what
15 that means? Do you have an
16 understanding?

17 A. It means that whenever the
18 license agreement -- I don't know. No.
19 I don't know. I don't know exactly
20 what it means.

21 Q. Do you see this Section 6 it
22 says, "The company hereby representing
23 covenance of Forall that the company
24 is not in default of any material
25 provision of the license and lease

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 Q. Is it still your testimony that
3 you thought Sarah or you believe Sarah
4 was no longer responsible under the
5 license agreement when Italnord took
6 over management of the store?

7 A. This language was a little bit
8 confusing. But again, the document
9 says what it says.

10 Q. Then Section 11, "No failure of
11 Forall to exercise any power reserved
12 to it under the license agreement or
13 this agreement or to assist upon strict
14 compliance by company or manager with
15 any obligation or condition, and no
16 custom or practice of the parties at
17 variance with the terms hereof shall
18 constitute a waiver of Forall's right
19 to demand exact compliance to terms of
20 the license agreement or this
21 agreement. Waiver by Forall of any
22 particular default by company or
23 manager shall not binding unless in
24 writing and executed by Forall"; do you
25 see that?

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Yes. But -- but our understanding that the license purchasing agreement would not be enforced fully when we went to Italy and talked to the CEO.

Q. And what year was that when you went to Italy and talked to the CEO?

A. 2012.

Q. And this agreement --- you didn't -- there was nothing in writing about that conversation or discussion that you can point to, is there?

A. No. It was practiced.

Q. I think you testified that -- strike that.

Do you believe it was Forall's obligation to try to mitigate Sarah's obligation under the lease agreement?

MR. LEWIS: I'm going to object and make sure Dr. Hamad understands the question as it calls for a legal conclusion.

THE ARBITRATOR: Sustained. Mr. Brown, when you use language

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CROSS-EXAMINATION OF DR. A. HAMAD
taken at this time.)

THE ARBITRATOR: Why don't you proceed, Counsel. Go ahead.

MR. BROWN: Okay. I'm going to put up Exhibit 8. Joint Exhibit 8.

Q. It's the management agreement by and between Forall and Sarah dated -- effective March 15, 2015; do you see the document, sir, that's on the screen?

A. Yes.

Q. All right. I'm going to scroll to the bottom, and is that your -- do you see your wife's signature as a 50 percent member of Sarah LLC for this agreement?

A. Yes.

Q. And have you seen this document before?

A. Yes.

Q. And did there come a time in March -- I lost my conductivities, which I need. Hold on.

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CROSS-EXAMINATION OF DR. A. HAMAD

like "duty to mitigate," that's really a legalese kind of thing, so I think Mr. Lewis has a point. Why don't you rephrase?

MR. BROWN: Fair enough.

Q. Dr. Hamad, you were testifying yesterday that Forall, while it was operating the store under the management agreement, should have tried to downsize or relocate the store?

THE ARBITRATOR: Hang on.

Mr. Brown, as I said, we took 10 minutes earlier, but I could use a break now. Are you at a point where we can do that?

MR. BROWN: Yes. I'm at a perfect point for that.

THE ARBITRATOR: Because we're going to break for lunch a little before 1:00, so it's an appropriate time to do it. Why don't we take another 10 minutes. Let's be sharp about it.

(Whereupon, a recess was

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THE ARBITRATOR: It says reconnecting.

MR. BROWN: Yeah. This can make a minute.

Q. While I'm rebooting, did there come a time in March of 2015 Forall agreed to step in and manage the store for a term?

A. Yes.

Q. And do you recall how long that term was for?

A. 18 months.

MR. BROWN: Trying to get it back on. Bear with me. Oh gosh, I'm having some difficulty here. I'm sorry.

THE ARBITRATOR: Guys, I hope no one objects, at 1:00 during the lunch time, I've got an emergency application for an temporary restraining order so I'm going to be munching some lunch now. I'll try to be as inconspicuous as possible.

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 MR. BROWN: That's fine.

3 Q. So it was an 18-month term,
4 correct, sir?

5 A. Yes.

6 Q. Do you see -- you testified as
7 this provision before, but "Forall
8 shall at its sole discretion advise
9 Sarah on or before March 2015 whether
10 it intends to take over the lease and
11 business and/or otherwise terminate the
12 management agreement at the end of the
13 initial term"; do you see that?

14 A. Yes.

15 Q. And did it, in fact, on or
16 before March 1, 2016, Forall indicate
17 its intentions to Sarah?

18 A. I don't think so.

19 Q. You don't believe that Forall
20 ever got in touch with Sarah at that
21 deadline to advise what it intended to
22 do?

23 A. They did. I'm sorry. They did.

24 Q. Okay. And in fact, didn't
25 Forall request additional time to make

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 this agreement at the end of the
3 initial term."

4 Isn't it true that prior to
5 March 1, 2016, Sarah and/or its
6 representatives were trying to turn
7 back the lease to Simon?

8 A. Simon tried.

9 Q. Simon tried to take the lease
10 back?

11 A. Simon communicated with us about
12 the status of the -- of the store.

13 Q. And did you advise Simon that
14 they would need to discuss with Forall
15 because Forall had an on-going
16 management agreement that the term ran
17 through September of 2016?

18 A. It was our understanding that
19 Forall was in constant discussion with
20 Simon since June or July 2014 all the
21 way into March 1, 2016.

22 Q. I'm sorry, what did Simon do?

23 A. I said it was our understanding
24 that Forall was in discussion with
25 Simon about lease or finding the new

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 that determination?

3 A. I believe so.

4 Q. And you -- you testified that no
5 written response was provided at that
6 time in 2016, right?

7 A. Say it again.

8 Q. You testified previously that
9 you did not -- that Sarah and none of
10 its interested persons provided any
11 kind of written response to Forall in
12 response to Forall's request for
13 additional time to make the
14 determination on the management
15 agreement?

16 A. Not at that point.

17 Q. And so Section 2.3 says, "Forall
18 shall have the right at the expiration
19 of the initial term to take over the
20 lease for the remainder of the duration
21 of the lease or to terminate this
22 agreement. Forall shall so advise the
23 company on or before March 1, 2016, of
24 its intentions with respect to whether
25 to take over the lease and/or terminate

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 space since June or July 2015, all the
3 way March 2016.

4 Q. I didn't get -- those dates seem
5 to overlap. You believe Forall was
6 speaking with Simon --

7 A. I believe Simon and Forall were
8 in constant communications since
9 July 2014 all the way until March of
10 2016.

11 Q. And you're basing that on what?

12 A. Based on e-mail, based on Paolo
13 visit to sign in 2014, and based on the
14 letter requested from Forall in
15 February 2016 asking to speak to Simon.

16 Q. But did you advise or did anyone
17 advise at Sarah that in or around the
18 spring of 2016, Sarah was surrendering
19 the lease and had signed the
20 cancelation of the lease in June 14,
21 2016?

22 A. It was clearly communicated to
23 Forall that they have a one year trial
24 to turn the store around, and they had
25 multiple opportunities to speak to

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 Simon about, you know, the lease and
3 changing the space.

4 So it was well understood
5 between both parties that this is a
6 one-year trial.

7 Q. Okay. And what about that trial
8 period --

9 A. What about --

10 THE ARBITRATOR: Let's wait
11 until he finishes the question.

12 Q. What about that trial period
13 modified or altered Sarah's on-going
14 obligations under the license to Forall
15 to make minimum purchases and run the
16 store for the period set forth in the
17 license agreement?

18 A. What do you mean by that
19 question?

20 Q. Sir, you just said there was a
21 trial period. Forall was managing the
22 store for a trial proceed, but the
23 obligations that Sarah committed to on
24 the license agreement were surviving,
25 weren't they not?

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 about that, so let's just stick
3 with the question. All right?

4 THE WITNESS: Thank you.

5 THE ARBITRATOR: Go ahead,
6 Mr. Brown.

7 MR. BROWN: Okay.

8 Q. So in this section, is there
9 anything in this management agreement
10 between Forall and Sarah that state
11 that after the term of the management
12 agreement Sarah's obligations will be
13 terminated under the license agreement?

14 A. The only thing is the six
15 months. Otherwise, no.

16 Q. And the six months, where is
17 that? Do you -- do you want to scroll
18 through this document? I can give you
19 access to that. Does that --

20 A. No. That -- supposed to give us
21 a notice in March 1, six months before
22 the send of the agreement.

23 Q. Okay. And that's in Section
24 2.1, correct?

25 A. I don't know what section it is,

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 A. It was never enforced.

3 Q. Well, what -- did anything that
4 you can point to modify or alter the
5 on-going -- the obligations under the
6 license agreement by Sarah to run the
7 store up until September of 2021?

8 A. The language says that in the
9 contract, but it was never enforced.

10 Q. Okay. But you -- but there's no
11 agreement that you can point to or no
12 writing that you can point to that
13 modified or otherwise terminated those
14 obligations that Sarah had, is there?

15 A. The six months notice to Sarah,
16 that was the modifications. It was
17 well understood that the six months.

18 THE ARBITRATOR: Dr. Hamad,
19 he just asked you if there was
20 anything in writing that modified
21 Sarah's obligations. Your answer
22 is it's understood but he didn't,
23 and you said that before, and
24 I've got it.

25 But he's not asking you

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 but it is there.

3 Q. Right here, right. 2.1, "Forall
4 shall assume exclusive management.
5 Forall at its sole discretion shall
6 advise on or before March 1, 2016,
7 whether it intends to take over"; is
8 that the six-month notice you're
9 talking about?

10 A. The exchanged e-mail before the
11 signed agreement and the six months,
12 yes.

13 Q. If the e-mail incorporated in
14 any way -- oh, gosh. That e-mail that
15 you're referring to, was that
16 incorporated in the management
17 agreement at all?

18 MR. LEWIS: Objection.

19 THE ARBITRATOR: Hold on.

20 You're rebooting, apparently.

21 Q. Does it reference the e-mail in
22 any way in this agreement, sir?

23 A. No. But -- no.

24 Q. And I'm going to go to 9.3,
25 which is on Page 8. And I'll point you

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CROSS-EXAMINATION OF DR. A. HAMAD
to this provision, 9.3, "The parties
acknowledge that this agreement should
constitute the entire agreement between
the parties and no variance or
modification hereof will be valid and
enforceable, except by supplemental
agreement in writing, executed and
approved by hereto"; do you see that?

A. Yes.

Q. Was there any subsequent
amendment or modification executed by
the parties that you're aware of?

A. No.

Q. And Sarah was represented by
counsel in connection with the
preparation and the execution of this
agreement, right?

A. Yes.

Q. In fact, David Hochman of
Kamensky Rubinstein Hochman & Delott
LLP, was that the law firm that
represented Sarah?

A. Yes.

MR. BROWN: Mr. Farber, I'm

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just going to take a minute to
confer with my co-counsel to see
if I have anything further.

THE ARBITRATOR: Okay.
(Whereupon, a recess was
taken.)

THE ARBITRATOR: Are we
ready?

MR. BROWN: Okay. I'm going
to go put my screen on. And I'm
going to pull up Exhibit 130,
Joint Exhibit 130.

Q. And were you present for Luca
Spano's testimony yesterday, sir?

A. Yes.

Q. And in fact, you talked a little
bit about this Forbes event, correct,
that you -- that Sarah put on in --
when was that? 2012?

A. Yes.

Q. And I think Mr. Lewis was asking
you some questions. You were talking
about how Forall supported you, but
didn't support you sufficiently for

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these types of things; do you recall
that testimony?

A. Yes.

Q. But isn't it the case that
Forall had given a \$46,000 credit for
that Forbes event to Sarah?

A. The event cost was a lot more
than \$46,000.

Q. Right. But did Sarah -- did
Forall support the event up to \$46,255
credit?

A. Yes, they did. But again, it
cost a lot more than this. Yes, they
did.

Q. And then under the license
agreement, Forall's obligation only
which were a match up to \$27,000 per
year, correct?

A. Yes.

Q. And this specific e-mail, Luca
is writing -- he is talking about two
different credits and how they have to
be accounted for, but the other credit
below that is advertisements, Vegas

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CROSS-EXAMINATION OF DR. A. HAMAD
mag, Hassan, Amex --

A. I do.

Q. Does that ring any bell as to
what those advertisement moneys were
spent for?

A. I don't remember. But this was
over a period a year, year and a half,
if I'm not mistaken.

Q. I'm putting up Luca's
spreadsheet here with the construction
cost and various data that Mr. Spano
testified about yesterday; do you
recall seeing this?

A. Yes, I do.

Q. And I think you said you had an
issue with the 2013 selling seasons or
seasons here \$544,939; is that your
testimony?

A. If I remember well, yes.

Q. What is your issue with that --
that allotment here in this 2013 year?

A. It wasn't -- I don't think it
was done by Sarah.

Q. And what do you base that on?

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Because this is in 2013, and it has to be for the fall, winter of 2013.

Q. Tell me why that is.

A. Because you place orders in February or March of 2013 for the fall, winter of 2013.

Q. But -- so is it your testimony there's only one selling season in the year?

A. No. It's two. So for the spring, summer -- for spring, summer you do in the fall -- the previous fall, and for the fall, winter you do in the previous summer or previous spring.

Q. So what about -- so are the other -- are the other data points accurate, to your knowledge, of 2010, 2011 entry and 2012 entry?

A. Possibly. I have to verify.

That's his spreadsheet. It's not mine.

Q. Why would he have credited those purchases to Sarah if they weren't placed by Sarah?

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else, Counselor?

MR. BROWN: Yes, I do, Your Honor. I'm going to go to Exhibit 109. Joint Exhibit 109.

Q. Dr. Hamad, can you see what's on my screen?

A. Okay. Yes.

Q. Do you recognize this document at all?

A. Not really, but I can see it.

Q. Do you know who Jim Veneruso is?

A. Has to be a lawyer.

Q. And you know who Lee Levin is, right?

A. Yes.

Q. And on March 5, 2013, Mr. Veneruso writes, "Dear, Mr. Levin, as you are aware, this firm represents Forall USA Inc., Forall. We are in receipt of your letter dated February 25, 2013." Okay?

A. Yes.

Q. He writes, "Point one, construction costs, Forall will,

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CROSS-EXAMINATION OF DR. A. HAMAD

A. Which one?

Q. These invoices received to date?

A. Again, you know, the 2013 I know for a fact we did not do that.

Q. How do you know that for a fact? Didn't you run the store until September '13?

A. Yeah. But again, that order has to be for the fall, winter in 2013, and we didn't do a buy then. I know that for a fact.

Q. How many buys -- how many seasons did you buy for total between 2010 and 2013?

A. I don't recall. But I know we didn't buy that last season.

Q. So did you buy for three seasons or four seasons or five seasons?

A. It has to be for four seasons. But, again, that may be placed under Sarah, but Sarah was not responsible for it. We did not perform for the fall, winter of 2013.

THE ARBITRATOR: Anything

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CROSS-EXAMINATION OF DR. A. HAMAD
pursuant to the party's agreement, continue to offer discounts to all goods sold to Sarah"; do you see that?

A. Yes.

Q. He goes on to say, "Sarah will need to take in the product for spring 2013 and pay for it in advance in order to provide sufficient credit to pay for all outstanding construction costs. According to Forall's calculations, once Forall delivers the spring/summer 2013 product, enough credit should be available to pay approximately 100 percent of Forall's responsibility for the build out cost"; do you see that?

A. Yes.

Q. So this letter indicates, as of March 5, 2013, Sarah had not yet taken in the spring 2013 line of product; do you agree?

A. That's what it says.

Q. Do you have anything that would demonstrate that this was false at that

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CROSS-EXAMINATION OF DR. A. HAMAD
time, that you had in fact already,
according to your testimony -- you
testified that you would have had to
place and receive those orders in 2012.

A. I think you're confused here.

Q. Tell me why I'm confused.

A. Because when you go in the
spring of 2013, you order for the fall,
winter of 2013.

Q. Okay. But allow me, it says
"According to Forall's calculation,
once Forall delivers the spring/summer
'13 product"; isn't that pretty clear
that that's not the fall, winter
product?

A. I don't know here what you
trying to say [sic].

Q. I'm trying to demonstrate that
your statement that you know you did
not receive product in 2013 is false.

MR. LEWIS: Objection. Hold
on.

THE ARBITRATOR: Let's hear
the objection.

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CROSS-EXAMINATION OF DR. A. HAMAD
2013 line?

A. This product must have been
ordered in 2012. I think you're
confused here. Because -- because
we're talking about spring, summer
2013, and delivery for spring, summer
2013, and the product must have been
ordered in the fall -- in the fall of
2012. So do not confuse the issue,
please.

Q. Your testimony is that there was
no invoices that were properly credited
to Sarah in 2013?

A. There was invoices for the
orders, the fall, winter, for the
spring, summer 2013. But we didn't
make any purchases for the fall, winter
of 2013, which happen typically in
February, March of 2013. So this is
where you are confused.

Q. Okay. But according to your
testimony, there would be only one
selling season per year and that's not
right, is it?

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CROSS-EXAMINATION OF DR. A. HAMAD

MR. LEWIS: The objection is
Dr. Hamad did not say he received
product. He said that was not
invoiced. That was not
representative of what they paid,
that last item for 500 something
thousand, not that the
merchandise wasn't delivered, and
I think that's the confusion that
you are having.

THE ARBITRATOR: Mr. Brown,
I take Mr. Lewis' point. I think
you should clarify with
questions, if you so chose.

Q. This letter to counsel, your
counsel, states that Sarah had not yet
accepted the product for the spring,
summer 2013; do you see that?

A. Yes.

Q. And it had not accepted it, and
it had not paid for it. Is it your
testimony it was already invoiced and
therefore it somehow was not your
product that was put in Mr. Spano's

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CROSS-EXAMINATION OF DR. A. HAMAD

A. No. There's two selling
seasons, but it happens the six months
before for the spring, summer. It
happens in the year before. And the
fall, winter, it happened in the same
spring, summer, so that's where the
confusion is.

MR. LEWIS: Objection.
Objection.

THE ARBITRATOR: Hang on.
There's no pending question.

Q. Did Sarah take receipts of the
fall -- spring, summer 2013 product as
Mr. Veneruso is writing about to
Mr. Levin in March of '13?

MR. LEWIS: Objection.

THE ARBITRATOR: What's the
objection?

MR. LEWIS: Based on the
relevance of this. I have no
idea where Counsel is going with
this. I'm sure he does, but he's
got a witness that's going to
testify about who paid for what

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 invoices. I'm sure that's what
3 Ms. Settimi --

4 THE ARBITRATOR: Mr. Lewis,
5 the last question simply asked
6 the witness if he knows if Sarah
7 took delivery of some -- and he
8 specified what the items were.
9 Either the witness knows or he
10 doesn't know. It has nothing to
11 do with invoicing. So he can
12 answer.

13 Dr. Hamad?

14 THE WITNESS: I don't
15 remember.

16 THE ARBITRATOR: Okay.
17 That's your answer. Go ahead.
18 Next question.

19 MR. BROWN: Okay. I don't
20 have any further questions.

21 THE ARBITRATOR: All right.
22 I just want to ask you one or two
23 questions. First of all, did you
24 write anything on your pad so you
25 want a few minutes to confer with

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 THE ARBITRATOR: I think
3 it's, yes. But I'm interested in
4 little B and little C, which is
5 on Page 4. Sorry, big B and big
6 C at the top of Page 4. There we
7 do.

8 Dr. Hamad, take a look at
9 this, because when I was
10 preparing last week and I read
11 this, I just -- no one has
12 touched on this and I just don't
13 know.

14 If you look at B, it says,
15 "Operator" -- that's Sarah --
16 "shall pay to Forall a security
17 deposit in the amount of \$200,000
18 to be held in escrow"; was there
19 a security deposit that was paid
20 and if so, whatever happened to
21 it?

22 THE WITNESS: There was no
23 security deposit. It was waived.

24 THE ARBITRATOR: It was
25 waived. Okay. Okay. Now, look

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 Mr. Lewis?

3 THE WITNESS: Yes, I did.

4 THE ARBITRATOR: Okay.

5 Well, I'll give you that
6 opportunity in a moment. I just
7 want to ask you something. Could
8 you take a look at the license
9 agreement itself and maybe you
10 could put up on the screen. I
11 think my memory was it was at the
12 beginning. Put up on the screen
13 article two of the license
14 agreement, and particularly I was
15 interested in 2.5.

16 Could you do that,
17 Mr. Brown?

18 MR. BROWN: Yes. I'm
19 working on it. 2.5 you want to
20 see?

21 THE ARBITRATOR: Yes.

22 MR. BROWN: Got it here.
23 2.5 starts at the very bottom of
24 Page 3. Is that the same
25 version?

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1 CROSS-EXAMINATION OF DR. A. HAMAD

2 at A. A says, "For the first
3 season, operator shall pay Forall
4 in execution of this agreement --
5 and it's very close to the
6 \$400,000 -- 398,238 by check or
7 wire transfer for the license
8 products ordered for the store,
9 the discounted cost"; was that
10 paid?

11 THE WITNESS: It was paid in
12 full, Your Honor, yes, four
13 months before we opened.
14 Actually, it was paid in March.
15 We opened in September and we
16 paid it in March.

17 THE ARBITRATOR: And is that
18 part of the chart that we were
19 just referring to?

20 THE WITNESS: Yes.

21 THE ARBITRATOR: All right.
22 That's all I wanted to know. I
23 just didn't -- particularly, the
24 security deposit I didn't know
25 about, so I wanted to know that,

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1 CROSS-EXAMINATION OF DR. A. HAMAD
2 and that's all I have. All
3 right.

4 Mr. Lewis, do you want 10
5 minutes to confer with your
6 client?

7 MR. LEWIS: Yes. Thank you,
8 Mr. Farber, unless -- I know you
9 have an obligation at 1:00.
10 Would you rather us reconvene
11 after lunch or you want us to get
12 started?

13 THE ARBITRATOR: Well, I'm
14 hoping we can finish with the
15 witness before lunch. Do you
16 know now if you have significant
17 redirect?

18 MR. LEWIS: Longer than a
19 half hour.

20 THE ARBITRATOR: I rather
21 not because, I told them I was
22 available --

23 Off the record, Maggie.
24 (Whereupon, a discussion was
25 held off the record.)

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 though, right?

3 A. Right.

4 Q. And Mr. Farber asked you and
5 Mr. Brown asked you whether there was
6 writings that supported your
7 understanding that Sarah was not
8 obligated to continue on under the
9 license agreement after the store
10 closed; do you remember being asked
11 that?

12 A. Yes.

13 Q. And there are, in fact, writings
14 that support that understanding, aren't
15 they?

16 A. Absolutely.

17 Q. And what are those writings?

18 A. Sets of e-mail exchanged between
19 lawyers, Mr. Brown, and Sarah LLC and
20 Forall.

21 Q. And what are those e-mails that
22 you're referring to state?

23 A. They state that the stores --
24 the store will be operating for one
25 year. At the end of the year, it will

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 RE-DIRECT EXAMINATION BY
3 MR. LEWIS:

4 Q. Dr. Hamad, you understand that
5 the stipulation consent agreement says
6 what it says?

7 A. Yes.

8 Q. And understand that the
9 management agreements between Sarah and
10 Italnord and Sarah and Forall say what
11 that they say, right, you understand
12 the language that's in these documents,
13 right?

14 A. Yes.

15 Q. Same thing for the APA, right,
16 you understand the language that's
17 present in those documents, right?

18 A. Yes.

19 Q. And you understand that based
20 solely on that language that Sarah was
21 obligated to continue on under the
22 license agreement, you understand that
23 that language says that, right?

24 A. Yes.

25 Q. But that -- there's more to it

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 be Forall's decision to give us -- if
3 they want to operate the store or not,
4 give us a month notice, and if they
5 don't want to operate the store, the
6 six-month notice will give us an
7 opportunity to turn the store back to
8 Simon.

9 Q. I'm going to show you one of
10 those writings and I'm going to show
11 Joint Exhibit 51.

12 MR. BROWN: Can I ask the
13 witness to get a better head
14 shot? I can't see his mouth, and
15 I'd like to see his whole face.

16 THE ARBITRATOR: Dr. Hamad,
17 if you can move back a little bit
18 on the screen. That's better.
19 We can see you better now. Okay.

20 THE WITNESS: I have to
21 focus on the screen, that's why
22 I'm putting my face next to the
23 screen.

24 THE ARBITRATOR: All right.
25 But we can see you better now, so

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RE-DIRECT EXAMINATION OF DR. A. HAMAD
we appreciate it.

THE WITNESS: Thank you.

THE ARBITRATOR: Okay.

Q. Dr. Hamad, can you see my screen?

A. Yes.

Q. And do you see at the bottom here we've got an e-mail string starting November 4, 2014; do you see that?

A. Yes.

Q. And then above that you see an e-mail from you to Paolo Torello-Viera; do you see that?

A. Yes.

Q. Do you see this piece here, and I'm going to read it very quickly, "This e-mail is to confirm that we are very interested for Pal Zileri to take over the, management of the Vegas store for a period of one and a half years. At the end of the first year of the agreement, you will let us know if you would like to take over the entire

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RE-DIRECT EXAMINATION OF DR. A. HAMAD
he said, "Agreed."

THE ARBITRATOR: Can we see that, please?

MR. BROWN: Thank you.

MR. LEWIS: So here's the exchange, Mr. Farber. We're starting with, "Great talking to you this morning," and I'll scroll up.

THE ARBITRATOR: Right. So where is the response where he says, "Agreed"?

MR. LEWIS: I'm scrolling now.

THE ARBITRATOR: I see. Okay. So where does he say he agrees?

MR. LEWIS: Are you asking me or are you asking Mr. --

THE WITNESS: "Dr. Hamad, thank you for the time dictated to our conversation this morning. As agreed, we will give mandate to our counsel to deal with yours

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RE-DIRECT EXAMINATION OF DR. A. HAMAD
lease, which would be a six-year agreement. If not, then Sarah LLC will have a six-month period to turn the store over to Simon"; do you see that?

A. Yes.

Q. And this was an e-mail you sent directly to the CEO of Forall?

A. Absolutely.

Q. And again, were you specific about what the six-month notice provision was for?

A. To give us an opportunity to talk to Simon and find a new tenant.

Q. Did Mr. Paolo Torello-Viera push back on that? Did he say, "No, we can't agree to that six-month notice provision"?

A. No. Absolutely not.

THE ARBITRATOR: Well, is there a written response from him? Dr. Hamad, do you know if there was a written response to him?

THE WITNESS: There was and

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RE-DIRECT EXAMINATION OF DR. A. HAMAD
on the management agreement. All best."

"As agreed," and I'm 100 percent sure, Honor, that that was the agreement.

Q. There's other documents I'm going to show you as well, Dr. Hamad.

THE ARBITRATOR: Go ahead.

Q. I'm going to share Joint Exhibit 8 really briefly because I don't want to belabor the point. This is the management agreement, Dr. Hamad, between Forall and Sarah, March 15, 2015.

A. Yes.

Q. And this is the term Section 2.1, and Mr. Brown covered this, but, again, this incorporates that, Sarah on or before March 1, 2016 -- it will inform Sarah on or before March of 2016 whether it intends to take over the lease and business and/or otherwise terminate the management at the end of the initial term; do you see that?

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 A. Yes.

3 Q. Is this consistent with the
4 e-mail exchange that you had with the
5 CEO of Forall that the six-month notice
6 would be provided, or six-month notice
7 would be provided for Sarah to turn the
8 store back over to Simon; is that
9 consistent with that?

10 A. Absolutely.

11 Q. There's one more exhibit and I
12 apologize. Dr. Hamad, you also were
13 asked about the possibility of Sarah
14 going back into the store and taking
15 over the store after Forall operated;
16 do you recall being asked that?

17 A. Yes.

18 Q. Okay. I'm going to share with
19 you Joint Exhibit 250. Can you see my
20 screen, Dr. Hamad?

21 A. Yes, I do now.

22 Q. And this is an e-mail between
23 yourself, your attorney David Hochman,
24 and the attorney for Simon, John Steen;
25 do you see that?

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 Counsel, I'm afraid we're going
3 to have to stop here because it's
4 five to 1:00, so we're going to
5 take our lunch break now. How
6 much more do you think you have,
7 Mr. Lewis?

8 MR. LEWIS: Maybe 10.

9 THE ARBITRATOR: We're going
10 on to lunch, and then we'll go
11 onto Dr. Bachar Hamad.

12 (Whereupon, a lunch break
13 was taken.)

14 THE ARBITRATOR: Mr. Lewis,
15 do you have any questions? Dr.
16 Hamad you're still under oath.

17 THE WITNESS: Thank you.

18 MR. LEWIS: Counsel, go
19 ahead.

20 MR. SHAH: You're still
21 muted.

22 MR. LEWIS: Thank you.

23 Q. Dr. Hamad, we were speaking
24 prior to lunch, and we were talking
25 about Exhibit 251 and the six months

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 A. Yes.

3 Q. And I'll read really quickly, "I
4 want to confirm what Sarah LLC is
5 requesting. In lieu of your proposal,
6 we are asking that Simon suspend its
7 efforts to obtain a replacement until
8 January 31, 2016. There will not be a
9 sales target that need to be met during
10 this period. Sarah will assess the
11 sales performance of the store. If its
12 sales have not improved during this
13 12-month period, Sarah will then notify
14 Simon to resume its search for a
15 replacement tenant"; did you see that?

16 A. Yes.

17 Q. Was this a condition of Simon
18 allowing Sarah to rescind the letter
19 agreement and allow Forall to operate
20 the store?

21 A. Absolutely.

22 Q. Do you see Mr. Steen agreeing to
23 the terms?

24 A. Yes.

25 THE ARBITRATOR: All right,

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 notice provision that had been
3 discussed with Simon and with Forall,
4 correct?

5 A. Yes.

6 Q. And we've gone through most of
7 this document, but we didn't look at
8 the top of the document; do you see the
9 January 12, 2015, e-mail?

10 A. Yes.

11 Q. And this is from your attorney,
12 David Hochman, to Forall's attorney,
13 Stephen Brown?

14 A. Absolutely.

15 MR. BROWN: We're not seeing
16 anything on the screen.

17 THE ARBITRATOR: I've got
18 it.

19 MR. LEWIS: It's shared.

20 MR. BROWN: It looks like we
21 might have just lost our
22 connection to Zoom. We're having
23 some internet issues today. Can
24 you bear with me as I --

25 MR. LEWIS: Sure.

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 MR. BROWN: I can pull up a
3 copy in the meantime. What is
4 the exhibit?

5 MR. LEWIS: 251. And we'll
6 be on it for 30 seconds.

7 MR. BROWN: We're back on.
8 Thank you. Sorry.

9 Q. Dr. Hamad, do you see this
10 January 12, 2015, e-mail?

11 A. Absolutely.

12 Q. And again this is from your
13 attorney, David Hochman, to Mr. Brown?

14 A. Yes.

15 Q. And your attorney explains to
16 Mr. Brown and shares with him streams
17 of e-mails with Simon's attorney,
18 right?

19 A. That's the property manager for
20 Simon, yes.

21 Q. "The goal was coordinate this
22 with the letter of content. Our
23 thought is that if Forall decides that
24 it wants to continue the management
25 agreement beyond the 18 months and

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 agreement?

3 A. Yes.

4 Q. And then to take that further,
5 did Forall in fact give you six months
6 notice that it did not intend to
7 operate the store in March of 2016?

8 A. Absolutely.

9 Q. And they understood how
10 important that was because they even
11 ask for an extension of time to keep
12 considering it, did they not?

13 A. Yes.

14 MR. BROWN: Objection. A
15 lot of inputting of what we
16 understood or other parties
17 understood.

18 THE ARBITRATOR: Is that an
19 objection or not?

20 MR. BROWN: Yes. I said
21 objection. Did you not hear?

22 THE ARBITRATOR: No, I
23 didn't hear it. I'm sorry. I
24 heard the answer already, so
25 let's go on. I apologize.

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 advises Sarah of this by December,
3 2015, Sarah would then revoke the
4 letter agreement with Simon. If things
5 do not improve to a level that Forall
6 wants to continue with the management
7 agreement, Simon would then recommence
8 looking for a replacement tenant, which
9 generally takes six months or more"; do
10 you see that?

11 A. Absolutely.

12 Q. Is this consistent with your
13 testimony that all parties involved,
14 Sarah Simon, and Forall, understood
15 that the six-month notice requirement
16 was for Sarah to be able to turn the
17 store back over to Simon?

18 A. Absolutely. And not only what
19 you mentioned, but also the law firm of
20 Forall, Mr. Brown.

21 Q. Mr. Brown is part of this
22 discussion?

23 A. Yes.

24 Q. Did the six-month notice
25 provision make it into the management

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 MR. BROWN: For some reason,
3 I think that you've missed a
4 couple of objections today. I
5 don't know if it's not picking my
6 first word up as I go.

7 THE ARBITRATOR:

8 Unfortunately, you may be having
9 -- for some reason your
10 connection today is not great.

11 All right. Let's proceed.

12 Q. Okay. Just to close this point
13 off, Dr. Hamad, you were asked if there
14 were writings that supported your
15 understanding that Sarah would not have
16 to continue under its obligation under
17 the license agreement, does this
18 refresh your recollection as to the
19 types of writing you relied on to
20 support that understanding?

21 A. Absolutely.

22 Q. Is there anything else that
23 supports your understanding that Sarah
24 would not have to continue on its
25 obligations under the license

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 agreement?

3 A. These documents are more
4 important than anything else.

5 Q. Did you also have a conversation
6 with Forall's CEO?

7 A. Yes.

8 Q. And I know we talked about that
9 before, I don't want to belabor the
10 point, but just to make sure it's
11 clear. In addition to these writings
12 leading up to the management agreement,
13 you had a conversation with the CEO in
14 2013, November of 2013, correct?

15 A. It was 2013 and also '12.

16 Q. In that conversation Mr. Baritza
17 said directly to you that you would not
18 be required to fulfill the minimum
19 purchase requirement under the license
20 agreement; is that true?

21 A. Absolutely, yes.

22 Q. We talked a bit about whether it
23 would be possible for you to have come
24 back into the store after Simon had
25 given the Pal Zileri one more chance to

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 forced to come back in and operate the
3 store?

4 MR. BROWN: Objection.

5 THE ARBITRATOR: What's the
6 objection?

7 MR. BROWN: Calls for
8 hypothetical. And you know, with
9 all due respect, this gentleman
10 wasn't even an officer of Sarah
11 LLC.

12 THE ARBITRATOR: Mr. Lewis,
13 where are we going with this? It
14 certainly is hypothetical.

15 MR. LEWIS: Mr. Farber, if
16 you just allow Dr. Hamad to
17 answer the question, it will be
18 clear.

19 MR. BROWN: Let's get a
20 proper witness. His only
21 position here is he's speaking --
22 he's not even speaking on behalf
23 of his wife, that's what he
24 testified to. He's a guarantor
25 to the license agreement.

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 make it work for a 12-month period; do
3 you remember that?

4 A. Yes.

5 Q. Let's talk about the practical
6 aspects of what would have happened had
7 you been forced to come back and
8 operate the store in March of 2016; do
9 you understand what I'm saying?

10 A. Yes.

11 Q. What inventory would you have
12 had had you been forced to come back
13 and operate the store in March of 2016
14 -- I'm sorry -- in September of 2016?

15 A. It had to be all the inventories
16 in the store, all seasons.

17 THE ARBITRATOR: I thought
18 the question was what inventory
19 would you have had; wasn't that
20 the question?

21 MR. LEWIS: I think he was
22 answering it, Mr. Farber, that's
23 correct.

24 Q. What inventory would you have
25 had in September of 2016 had you been

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 MR. LEWIS: Is this an
3 objection, Mr. Brown?

4 THE ARBITRATOR: Hold on.
5 It is an objection. All right,
6 Counsel. I hear the objection.
7 All right. I'm going to overrule
8 the objection. I understand the
9 import of it, though, and I will
10 consider the import of the
11 objection in weighing what
12 weight, if any, I will give to
13 the response, but to the extent
14 he has knowledge, which he may
15 have gotten from his wife or from
16 someone in the store, he can
17 respond.

18 So the question was: What
19 inventory would have been
20 available to the store if Sarah
21 retook possession of the store?

22 THE WITNESS: It would have
23 been all the inventory, Honor,
24 all seasons' inventory.

25 Q. And why is that Dr. Hamad?

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 A. Because we didn't do a buy, so
3 and -- and actually, in a letter from
4 Paolo to us, he specified that you need
5 to take over all inventories in the
6 store, which is all the inventories.

7 Q. The point being, Dr. Hamad, that
8 it would have been too late to do a buy
9 for the spring --

10 A. Absolutely.

11 Q. Let me finish the question. For
12 the fall, winter of 2016, that's the
13 point, correct?

14 A. Right.

15 Q. Mr. Brown asked you about
16 Exhibit 55, and I'm going to bring that
17 up just very briefly.

18 Dr. Hamad, do you see my screen?

19 A. Yes, I do.

20 Q. Okay. Mr. Brown asked you about
21 this document, and he took you to this
22 sentence starting with, "It does not
23 appear the lease allows the assignment
24 to corporate"; do you see that?

25 A. Yes.

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 A. This is before.

3 Q. So we've got Simon saying "No,"
4 they had no intention of going forward
5 with Pal Zileri in February, correct?

6 A. Absolutely.

7 Q. And we have Forall saying that
8 they do not intend to move forward
9 operating the store in March of 2016,
10 correct?

11 A. Yes.

12 Q. And then we have Sarah entering
13 into the agreement to return the lease
14 to Simon in June of 2016, correct, do I
15 have that timeline correct?

16 A. Yes.

17 Q. There was some discussion about
18 the \$38,000, and I would say there was
19 some -- it wasn't very clear, the
20 discussion about the \$38,000; do you
21 recall that?

22 A. Yes.

23 Q. Without belaboring this point
24 either, can you try to put a finer
25 point on why you feel Forall was still

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 Q. But the sentence prior to that
3 really is what demonstrates Simon's
4 intention here?

5 THE ARBITRATOR: Hang on.

6 Let me hear that question again?

7 Q. The sentence before that more
8 speaks to Simon's intentions; does it
9 not?

10 A. Yes.

11 Q. Can you read that for Arbitrator
12 Farber?

13 A. "We do not plan to transfer the
14 store to Pal Zileri corporate."

15 Q. Okay. That's a definitive
16 statement, correct?

17 A. It's 100 percent definitive
18 statement.

19 Q. Okay. And that's February of
20 2016; do you see that?

21 A. Yes.

22 Q. And is that before or after
23 Forall informed you they would not
24 extend the term of their operation of
25 the store?

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 responsible for the \$38,000?

3 A. The reason why, again, is
4 Alfonso started operating the store on
5 September 9th or 10th or something like
6 this in that range.

7 And the license agreement was
8 not done and signed until, I think,
9 September '13. So we were in an
10 awkward position where we were forced
11 to accept what's written because it was
12 already in the store and --

13 Q. So you were forced because you
14 had already moved out of the store and
15 Italnord was already in the store when
16 you signed that agreement; is that your
17 testimony?

18 A. I think so, yes.

19 Q. Let me ask you this: Your
20 understanding was that Forall still
21 owned the responsibility to reimburse
22 the \$38,000 on the construction costs?

23 A. Yes.

24 Q. So let's talk very quickly about
25 the store's performance. There has

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD
2 been testimony and there's been
3 discussion about it in opening remarks,
4 but I want to ask you if you recall
5 what the store's performance was, let's
6 just say, in 2013, do you recall what
7 your sales were?

8 A. We were privileged to have
9 monthly report from Simon at the
10 Caesars Palace and the monthly sales
11 for the store. So Sarah LLC had
12 average sales of 150,000, 155,000 a
13 month, and that was not enough to
14 sustain the store and make it move
15 forward. We were in the negative.

16 And when Italnord took over, we
17 were still privileged to have those
18 informations. And, you know, that
19 calculations and the average were
20 around \$113,000 a month. As a matter
21 of fact, I still remember vividly, the
22 last month Italnord was at the store he
23 sold for \$30,000. So the store's
24 performance was deteriorating as we
25 moved on.

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 MR. LEWIS: I don't have
3 anything further with this
4 witness.

5 THE ARBITRATOR: Mr. Brown,
6 anything else?

7 MR. BROWN: Yes, sir.

8 * * *

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1 RE-DIRECT EXAMINATION OF DR. A. HAMAD

2 And then Forall took over. We
3 thought they were going to do the great
4 job. They're the mother company. They
5 know the business. This is their
6 product. They're familiar with how to
7 sell it. And unfortunately, even
8 though, you know, they did what they
9 did, the sales dropped even more and
10 drastically to, like, \$63,000 a month,
11 not to cover the rent.

12 Simon was panicking and they did
13 not like what they saw, and this is was
14 one of the reasons also why they didn't
15 want Pal Zileri to be in the mall.

16 They were just afraid that one day they
17 going to close the shop and walk away.
18 And those reports are available; if you
19 want I can supply with those reports.

20 They're directly from Simon from
21 Caesars Palace. There's
22 authentications on those reports.
23 There's no doubt about it.

24 Q. Okay. I appreciate that, Dr.
25 Hamad.

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1 RE-CROSS EXAMINATION OF DR. A. HAMAD
2 RE-CROSS EXAMINATION BY
3 MR. BROWN:

4 Q. You just said Simon was
5 panicking as a result of the sales
6 numbers; wasn't it in fact you and your
7 brother that were panicking?

8 MR. LEWIS: Objection. This
9 was more for clarification. I
10 thought you instructed us that we
11 could not do any re.

12 THE ARBITRATOR: Wait a
13 minute. You called him as a
14 witness, and you just had
15 re-direct. Each one gets one.
16 You had a re-direct, he gets a
17 re-cross. Am I missing
18 something?

19 You can answer the question,
20 Dr. Hamad.

21 A. We were concerned about the
22 performance of the store. We thought
23 Forall will do a great job; however,
24 they really do the poor job, Honor.
25 They were not up to the task and they

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RE-CROSS EXAMINATION OF DR. A. HAMAD
destroyed the store and the brand name.

Q. I'll say it again. Wasn't it
you, in fact, that was panicking and
you chose to --

A. No.

Q. You chose to mitigate your
exposure by getting out from the
guaranty on lease with Simon; is that
correct?

A. Absolutely not. We were very
concerned about the market, Pal Zileri,
the store. As opposed to -- you know,
I mean, we were very concerned, but we
were not panicking.

We wished you well, by the way.
We were good citizens. We did --

THE ARBITRATOR: Dr. Hamad,
just -- just answer the question.
All right.

Go ahead, Mr. Brown.

Q. So you just testified that you
were going to be unable to take the
store back because you would have only
had old inventory as of September '16;

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RE-CROSS EXAMINATION OF DR. A. HAMAD

THE ARBITRATOR: The
question is: Have you ever seen
this before?

THE WITNESS: Yes.

Q. Okay. And it says -- and did
you see it at that time, June 1, 2016,
or thereabouts?

A. Yes.

Q. And I said, "This letter is in
follow up to my client's letter dated
March 9, 2016, a copy of which is
attached. We had no response from
either office or from client," pardon
the brevity of my writing there. "It is
imperative that we confirm that your
client is prepared to take over the
store and lease effective
September 2016, and meet its
obligations under the license and
retail agreement."

This is before you canceled the
lease, right?

A. Yes.

Q. "I remind you that under the

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RE-CROSS EXAMINATION OF DR. A. HAMAD
isn't that right?

MR. LEWIS: Objection. Not
his testimony.

A. Yes, we did. There was not
enough time to go and buy any new
merchandise.

Q. I'm sharing my screen here,
which is unfortunately continuing to
have issues. I'm going to Exhibit 240.

THE ARBITRATOR: Getting
connection lost again.

MR. BROWN: I know. So am

I.

Q. Here we are. Going to the
second page of this document, which
this is a letter, sir, from me to your
counsel dated June 1, 2016. Okay?

A. Yes.

Q. Have you ever seen this document
before?

A. Vaguely.

MR. LEWIS: What exhibit is
this?

MR. BROWN: Exhibit 240.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

license agreement, Sarah LLC is
responsible to pay in advance for stock
inventory in the store, and is required
to provide adequate inventory at the
store at all times as more particularly
set forth in the letter of March 9,
2016. Please notify me of your
client's contention to confirm that
Sarah LLC will meet its contractual
obligations. All rights are reserved."

Did you or anyone on your behalf
respond to this letter?

A. I'm not aware of it.

Q. And the second page of this
document was the previously provided
letter from Paolo Torello-Viera, CEO of
Pal Zireli, of March 9, right, to your
brother, Sarah LLC, care of your
brother?

And it states that we've already
notified you. "Consequently, effective
September 1, 2016, Sarah shall again
assume possession Pal Zileri store.
The lease for the premises and all

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RE-CROSS EXAMINATION OF DR. A. HAMAD
obligations under the party's license
and retail operator agreement dated
March 2011."

Sir, how can you say that you
thought that you didn't have to take
back the store?

A. Because of the e-mails we
exchanged with and you were aware of
it, and because of the six months made
it into the management agreement. And
you guys were aware of it, that we are
going to turn the store if you don't
take care of it.

Q. But you don't have anything in
e-mails six months prior from your side
stating some, you know, wishes, but you
have nothing in the agreements that the
parties actually agreed to, do you?

A. In the agreement, we have the
six months notice. It was clear-cut
notice that you need -- you need to
tell us six months in advance. You
were on the e-mail, and you're aware of
it.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

THE ARBITRATOR: Why don't
you restate it, Mr. Brown.

Q. Didn't you, in fact, have this
notice as earlier as March 9, 2016,
from Forall that you needed to get
product ready for the fall?

A. The notice is here, but there is
no adequate time to go and do the buy.
The buy usually happens --

THE ARBITRATOR: He's not
asking about the buy, Dr. Hamad.

The question simply was: Did you
have the notice? That's all.

THE WITNESS: Okay. I had
the notice.

THE ARBITRATOR: Okay.
That's it.

Q. And is it your testimony that
Forall would not have been able to
provide you with the autumn and fall
product line with that amount of time?

A. It's not enough time to do it.

Q. Isn't it true that in the
selling season in Las Vegas that

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RE-CROSS EXAMINATION OF DR. A. HAMAD

Q. Okay. I'm -- so by you stating
just now that -- you testified you
would not have had the opportunity to
have inventory in the store; isn't that
false?

Didn't Mr. Torello-Viera give
you adequate notice that you had to get
product and start ordering it, and get
it in the store as early as March 2016,
and then you had no response to this?

A. Mr. Brown, you probably are not
aware of the way the business is done.

THE ARBITRATOR: Hang on.

Dr. Hamad, he's not asking you
how the business was done. He's
simply asking did you have this
notice from Forall about getting
inventory; that's all he's
asking.

Either you had the notice or
you didn't have the notice.
That's what he's asking.

THE WITNESS: Let him ask
that question again, Honor.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

product generally delivered late
September for October and November
rushes?

A. It's usually delivered in
August, start delivering in August,
late July, August into September.

Q. Isn't it true that there's very
little foot traffic in Los Vegas due to
the heat, and therefore, the fall and
winter lines are not usually delivered
into the start of September, late
September?

A. No.

Q. Okay.

MR. BROWN: I don't have any
other questions.

THE ARBITRATOR: Okay. Dr.
Hamad, thank you very much for
your testimony. We appreciate
it. You're excused. Mr. Lewis,
who is your next witness?

THE WITNESS: Thank you,
sir.

MR. BROWN: Thank you.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

MR. LEWIS: Dr. Bachar

Hamad.

THE ARBITRATOR: All right.

Let's get Dr. Mathew Bachar

[sic].

MR. LEWIS: Dr. Bachar

Hamad.

THE ARBITRATOR: Bachar

Hamad, okay.

MR. BROWN: Mr. Farber, if

it's okay with you, I'm going to

try to reboot my computer to

perhaps see if that may help my

bandwidth issues. I've been

having them throughout the day.

THE ARBITRATOR: Go ahead.

We're waiting for Dr. Bachar

Hamad.

Dr. Bachar Hamad?

THE WITNESS: Yes.

THE ARBITRATOR: I'm Gene

Farber. If we could see you, I'd

appreciate it. Nice to meet you,

Doctor.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

THE ARBITRATOR: Dr. Bachar

Hamad, are you alone in the room?

THE WITNESS: Yes.

THE ARBITRATOR: Could you

stand please or stand in such a

way that I could still see you?

I need to see your face. Okay.

Raise your right hand. Do

you solemnly swear the testimony

you're about to give in this

arbitration proceeding will be

the truth, the whole truth, and

nothing but the truth?

THE WITNESS: I do.

THE ARBITRATOR: Could you

be seated please and spell your

full name for me and let me have

an address which could be either

home or work?

THE WITNESS: B-A-C-H-A-R,

last name, H-A-M-A-D. And the

address 1717 Midwest Club

Parkway, Oak Brook, Illinois

06523.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

THE WITNESS: Nice meeting

you.

THE ARBITRATOR: I know that

Mr. Lewis wanted to call the A

before the B, so that's why he

called your brother first, right?

We're waiting for counsel

for Forall to join us. He had

some computer issues, and he's

rebooting right now, so give us a

moment.

MR. BROWN: Arbitrator

Farber, you can proceed. I can

see the screen on my co-counsel's

screen.

THE ARBITRATOR: Right. I

prefer to see if you're handling

the witness, because if you say

the word "objection" and I can't

see you that doesn't work. I'd

rather be able to see you.

That's better.

MR. BROWN: Good. Thank

you.

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RE-CROSS EXAMINATION OF DR. A. HAMAD

THE ARBITRATOR: Dr. B.

Hamad, your counsel, Mr. Rodney

Lewis, is going to ask you some

questions, and what I'd like you

to do is, let him finish the

question. Don't jump in with an

answer.

And when he's finished with

each question, pause. The

gentleman in the vest who you see

on the screen is Mr. Brown, and

if Mr. Brown says the word

"objection," do not answer the

question until I tell you whether

or not you should do so.

Otherwise, if he does not

say the word "objection," just

try to respond as directly as you

can to the question posed by Mr.

Lewis. All right?

THE WITNESS: All right.

THE ARBITRATOR: Mr. Lewis,

why don't you proceed, please.

* * *

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
 2 B A C H A R H A M A D, the witness
 3 herein, having been first duly sworn by
 4 the arbitrator, was examined and
 5 testified as follows:
 6 DIRECT=EXAMINATION
 7 BY MR. LEWIS:
 8 Q. Good afternoon, Dr. Hamad. How
 9 are you?
 10 A. Good morning.
 11 Q. I covered a lot of the
 12 background of how you all --
 13 THE ARBITRATOR: Speak a
 14 little louder, Mr. Lewis, if you
 15 can.
 16 MR. LEWIS: Are we having
 17 the same issues with my sound
 18 again?
 19 THE ARBITRATOR: Better now.
 20 Go ahead.
 21 Q. I was saying -- Dr. Hamad, we'll
 22 jump right in instead of doing the
 23 background with you, since we have
 24 covered background.
 25 I want to take you to 2013 --

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
 2 came back into the store after Italnord
 3 cease operating or notified Sarah that
 4 it was going to ceased operating and
 5 began operating the store again?
 6 A. That's not true. That's not
 7 true.
 8 Q. So I'm going to show you a
 9 couple of documents just to help with
 10 the timing here. I'm going to show you
 11 Group Exhibit 7 -- Joint Exhibit 7,
 12 rather.
 13 Dr. Hamad, can you see my
 14 screen?
 15 A. I can see it here, yeah.
 16 Q. Okay. All right. Do you see
 17 this is the management agreement
 18 between Italnord and Sarah dated
 19 September 20, 2013?
 20 A. Yes.
 21 Q. And you see the term of this
 22 agreement was to continue until
 23 January 31, 2015, correct?
 24 A. Yes.
 25 Q. That's your understanding that

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
 2 excuse me -- 2014, when Alfonso Entebi
 3 decided that he was going to the go --
 4 let me take a half step back.
 5 Do you recall a time when
 6 Italnord began operating the store in
 7 Las Vegas?
 8 A. Do I remember the time, the
 9 date?
 10 Q. No. Do you recall that that
 11 happened?
 12 A. I do.
 13 Q. And do you recall the terms
 14 surrounding -- the period of time
 15 surrounding when Italnord would operate
 16 the store?
 17 A. Yes.
 18 Q. And some point in time did
 19 Alfonso Entebi inform Sarah that
 20 Italnord would not continue operating
 21 the store after the end of the first
 22 term?
 23 A. Yes.
 24 Q. And there was some testimony and
 25 there's been some argument that Sarah

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
 2 Italnord was going to operate the store
 3 at least until January 31, 2015?
 4 A. Yes.
 5 Q. Okay. However, at some point,
 6 Mr. Entebi informed you that it was not
 7 going to continue operating the store
 8 beyond January 31, 2015, right?
 9 A. He did inform us, yeah.
 10 Q. And you are aware that Forall
 11 came in and began operating the store
 12 somewhere around March 15, 2016,
 13 correct?
 14 A. Yes.
 15 Q. I'm sorry. March of 2015?
 16 A. Yeah.
 17 Q. So there was a little bit a
 18 month and a half lag --
 19 THE ARBITRATOR: You meant
 20 '15 not '16. You said '16.
 21 MR. LEWIS: That's right,
 22 '15.
 23 Q. So between January 31, 2015, and
 24 when Forall came in and began operating
 25 in March of 2015, did Sarah operate the

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 store?

3 A. No.

4 Q. Didn't Simon insist that
5 business continue and that the store
6 was operational at all times?

7 A. Yes.

8 Q. So who operated the store during
9 that period?

10 A. Actually, what happened is there
11 was a drop from the part of Paolo and
12 he allowed Entebi to stay in that store
13 for one and a half month.

14 Because we are on the lease, we
15 have to pay the lease, and he was
16 selling his merchandise for his own
17 benefit. So we had to pay the lease
18 for one and a half month allowing
19 Entebi to stay in the store, because
20 Paolo was saying, "Yes, tomorrow, after
21 tomorrow, the day after, we see what
22 happened," until end of March and they
23 made agreement.

24 Q. So if I understand, Italnord is
25 still in the store selling merchandise

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 2013, Sarah LLC never came back in to
3 operate the store, correct?

4 A. No, it did not. No.

5 Q. Is that consistent -- first of
6 all, is it your understanding that when
7 the store closed in August of 2016,
8 that Sarah LLC was no longer required
9 to fulfill its obligations under the
10 license agreement; is that your
11 understanding?

12 A. Yes.

13 Q. Is the fact that Sarah never
14 came back into the store to operate the
15 store after September 2013, does that
16 support your understanding that you
17 were not required to continue on under
18 the license agreement?

19 A. Yes.

20 MR. BROWN: Objection. I
21 mean, I just --

22 THE ARBITRATOR: Well, he
23 answered already, so let's go to
24 the next question.

25 Dr. Bachar Hamad, you have

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 and keeping the revenue, but Sarah was
3 being forced to pay the rent?

4 A. Yes.

5 Q. And so that's what took place
6 for February of 2015?

7 A. Yeah. I'm sorry. From
8 January 31st until mid March, one and a
9 half month.

10 Q. So looking at that time from a
11 broader perspective. When Sarah sold
12 its assets to Italnord back when this
13 agreement was entered and the asset
14 purchase agreement was entered in
15 September of 2013, did Sarah ever come
16 back in to operate the store?

17 A. To be honest with you, we never
18 went back until now, no. We did not go
19 to Vegas, and up to now we did not go
20 to Vegas.

21 Q. I'm sorry. I didn't mean to
22 interrupt you. I don't mean you and
23 your brother specifically. I mean
24 Sarah LLC, from the time you sold the
25 assets to Italnord in September of

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 to wait to give Mr. Brown an
3 opportunity to say "objection."
4 So you have to pause at the end
5 of each question. All right.

6 Next question, Mr. Lewis.

7 Q. Dr. Hamad, do you recall going
8 to Italy in November of 2013?

9 A. Yes.

10 Q. What was the purpose of your
11 trip to Italy in November 2013?

12 A. We -- the store was not
13 performing very well, so we went to the
14 company and had a nice discussion with
15 owner and CFO and Luca and informed
16 that the store was not performing
17 [sic].

18 Q. And when you say "the owner,"
19 and then you said, "The CFO," or --

20 A. Yeah. I think all of them --
21 Mr. Marco, and Luca, and there was
22 another guy in charge of the operation
23 in the meeting.

24 Q. Okay. And what was the
25 discussion, to the extent you can

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 recall?

3 A. Discussion was about the status
4 of the store, that the sales were not
5 that great, and if we going to continue
6 to operate like this, it would be total
7 collapse soon -- sooner or later so we
8 asked for some help [sic].

9 Q. And did Forall offer any help at
10 that meeting?

11 A. Well, he said he will expect to
12 look -- to look to see if there is
13 anything he can do management,
14 advertisements. We asked for reduction
15 at that time of the -- of the price.

16 They said they are giving us
17 three percent, including the
18 construction, 20 percent. But we found
19 out later on that the three percent was
20 given to everybody buying from that
21 place, in any store around the world.

22 THE ARBITRATOR: You just
23 said -- Dr. Bachar Hamad, you
24 asked for reduction of price,
25 what does that mean?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 THE ARBITRATOR: Who said
3 what?

4 THE WITNESS: Marco --
5 Mr. Marco, the owner, said we can
6 buy whatever we can, you know, we
7 can sell. The agreement is not
8 enforceable. You don't have to
9 buy like 500 or 450 a season.

10 THE ARBITRATOR: And who
11 said that, Luca or Marco?

12 THE WITNESS: Marco. He
13 said keep whatever left in the
14 old season, and buy whatever you
15 can support the new season.
16 That's -- the plan was to do it
17 this way [sic].

18 THE ARBITRATOR: Did anyone
19 take any notes at this meeting?

20 THE WITNESS: No.

21 THE ARBITRATOR: Okay. Go
22 ahead.

23 Q. So your brother was at the
24 meeting as well?

25 A. Yes.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 THE WITNESS: Discount --

3 More discount.

4 THE ARBITRATOR: I see.

5 Okay.

6 Q. And did Forall eventually agree
7 to provide additional discounts?

8 A. No. At that meeting, no. But
9 later on I think they sent an e-mail
10 that they are considering more
11 discount. It never happened.

12 Q. Did you discuss the minimum
13 purchase requirement at the meeting in
14 November of 2013?

15 A. We discuss this issue and the
16 president at that time, he said it's
17 not enforceable.

18 THE ARBITRATOR: I'm sorry.

19 I can't hear the last answer.

20 THE WITNESS: I said we
21 discuss it with Luca and
22 Mr. Marco and they informed us
23 that that agreement is not
24 enforceable. So we buy whatever
25 we can sell.

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2 Q. Did you all discuss afterwards
3 the changes or what the discussion --
4 did you all discuss afterward what you
5 all had discussed with the CEO and
6 Marco -- excuse me -- the CEO and Luca
7 during the meeting?

8 A. That meeting we told them what's
9 going on with the store that -- you
10 know, I think by that time we put
11 \$2 million, lots of \$2 million in the
12 store.

13 And he was shocked by this
14 number. And he said, "We'll do
15 whatever to help you," and it was a
16 nice conversation. But he is -- at
17 that time he said, "We cannot give you
18 more discount, and see what the
19 option." And we said "Well, he was
20 thinking about having somebody else
21 taking over the store who can manage
22 the store better," thinking that
23 there's problem with the management.
24 And he said, "Well we can investigate
25 other -- other -- other -- let's put it

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2 this way -- other operators of the
3 store."

4 And you know, I expressed
5 interest, if it doesn't work out to
6 look for other avenue. You know,
7 because you cannot keep losing like
8 this all the time.

9 Q. Okay. And I guess I was asking
10 you if you and your brother after the
11 meeting had spoken about what
12 transpired at the meeting?

13 A. From then, nothing.

14 Q. I'm going to show you joint
15 Exhibit 55.

16 THE ARBITRATOR: Could you
17 just hold one second? I'm
18 looking in my notes for
19 something.

20 What was the date -- this
21 meeting took place in Venice
22 right?

23 THE WITNESS: Yes.

24 THE ARBITRATOR: And you're
25 sure it was in '13?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 THE ARBITRATOR: Right. Did
3 anyone say anything about
4 readjusting the minimum purchase
5 requirement in some fashion?

6 THE WITNESS: I don't recall
7 that, no.

8 THE ARBITRATOR: Did anyone
9 say anything about a minimum
10 purchase requirement based on
11 prior years sales?

12 THE WITNESS: They said if
13 it doesn't sell, you don't have
14 to buy it. You can go lower. It
15 doesn't have to be the exact
16 amount, because they were not
17 selling. He said, "You don't
18 have to buy whatever we agreed
19 on. You can buy whatever you
20 need."

21 THE ARBITRATOR: And did
22 anyone say how long this
23 agreement would last that you
24 didn't have to buy any minimum
25 purchase requirement at all?

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2 THE WITNESS: I think it was
3 in -- actually, '12, '12.
4 One year after. It was around
5 Thanksgiving.

6 THE ARBITRATOR: That's what
7 I want to clarify. All right.
8 Now, at this meeting, was
9 anything said about some other
10 formula that you had to abide by
11 or were you just told you could
12 ignore the minimum purchase
13 requirements?

14 THE WITNESS: We were told
15 that we going to help you by, you
16 know, whatever we can do to help
17 you. You don't have to buy the
18 minimum purchase. And exactly
19 that that was -- whatever left in
20 the store, keep it. Then sell it
21 in the wholesale and buy new
22 stuff. You don't have to go
23 there with the whole amount
24 [sic]. And Luca was in the
25 meeting.

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2 THE WITNESS: He said it
3 only vaguely for -- he did not
4 specify any time. I'm not
5 remembering that was specified
6 time.

7 THE ARBITRATOR: Do you know
8 of any writing that exists that
9 -- that exists for the this
10 statement that you say that was
11 made that you don't have to pay
12 attention to the minimum purchase
13 requirement?

14 THE WITNESS: I'm not aware
15 of any I can think, no [sic].

16 THE ARBITRATOR: All right.
17 Why don't you proceed, Mr. Lewis?

18 MR. LEWIS: Thank you.

19 Q. Just to finish off Arbitrator
20 Farber's point, Dr. Hamad, was there a
21 discussion about the new requirement to
22 purchase being connected to prior
23 seasons' sales. I want to make sure
24 you have an opportunity to make that
25 clear for Arbitrator Farber?

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MR. BROWN: Objection. That was asked and answered.

THE ARBITRATOR: I think he made it pretty clear. He said there was no such thing, so if you want to repeat it. He can repeat it.

MR. LEWIS: That's what I thought came through, but that's not what he said originally.

THE ARBITRATOR: Okay. The record will show what he said, but you go ahead with your questions.

Q. I believe Mr. Farber was asking you, Dr. Hamad, and I wasn't sure you understood.

MR. BROWN: Objection. Coaching a witness.

MR. LEWIS: I'm sorry.

THE ARBITRATOR: Let's pose the question without what he understood, and what he didn't understand. Just pose the

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A. Yes.

Q. Did you at some point ask Forall to help find a new operator?

A. Yes.

Q. Did Forall, in fact, find a new operator?

A. Yes.

Q. Was that Italnord?

A. Yes.

Q. Had you had any familiarity with Italnord before Forall identified them as a new operator?

A. No.

Q. What did you come to learn about Italnord and other stores that it may have owned?

A. I'm sorry. Say that again.

Q. What did you come to learn about Italnord and its owner, Alfonso Entebi, and other stores that they owned?

A. This is from Forall. They are the one who brought him to operate the store. We didn't know anything about him. They said, "He have four, five

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question.

Q. During the meeting with Marco Baritza and Luca Spano, was there a discussion about purchases being connected to past seasons' sales determining how --

A. That's exactly -- that's what they said. I just mentioned to you that that season -- what did not sell, he said you can go down on the amount of purchase needed.

Q. That's what I thought you said.

THE ARBITRATOR: Okay. Go ahead.

A. I have some connection problem here.

THE ARBITRATOR: No. You're fine. We can hear you loud and clear, Dr. Bachar Hamad.

So go ahead Mr. Lewis.

Q. So did sales improve in 2013?

A. No.

Q. Eventually, did you ask for additional assistance from Forall?

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stores in Mexico, he's a good guy, and have him take over."

Q. You said he had four, five stores in Mexico?

A. Yes.

Q. Do you know if he had a Pal Zileri store, at lease one?

A. Yes, he want to have Pal Zileri store, yes.

Q. What was your understanding about the performance of Mr. Entebi's stores?

A. No idea. Before the -- he came to us, they did not tell us anything about him, no.

Q. Did you come to learn that he had successfully operated Pal Zileri stores?

A. Yes.

Q. Was Mr. Entebi able to successfully operate the Las Vegas store?

A. The answer is no.

Q. Despite his years --

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A. Despite his experience. Sorry about this. Go ahead.

Q. Despite his experience and successful track record with Pal Zileri stores, he wasn't successfully able to operate the Pal Zileri store?

A. He was not able to perform no.

Q. Dr. Hamad, did Simon require Sarah to provide regular sales reports?

A. Yes.

Q. How often did you have to provide those to Simon?

A. Every month.

Q. From what you recall, was that a provision of the lease that required that?

A. Yes.

Q. And did you abide by that?

A. Yes.

Q. From what you recall, as far as you were aware, did Italnord also have to abide by that lease provision?

A. The answer is yes.

Q. So Italnord had to provide

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Q. Was Forall under the same obligation to provide monthly reports to Simon when it operated the store?

A. Yes.

Q. As far as you know, did they abide by that obligation?

A. Yes. Simon has all the sales each month from the beginning to the end.

THE ARBITRATOR: Dr. Bachar

Hamad let's wait for a question and then you respond to the question. All right?

THE WITNESS: Yes.

Q. So Simon was aware of the store's performance or lack thereof, right?

A. Yes.

Q. Did you have conversations with Simon in 2013 about the sales -- the store's performance?

A. Yes.

Q. Did you have conversations with Simon in 2014 about the store's

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monthly sales figures to Simon as well?

A. He was providing under our name; not under his name. Even Pal Zileri was supposed to provide monthly payment under our name, under Sarah LLC, because legally they cannot -- you know, they cannot operate the store. They are not on the lease.

Q. Dr. Hamad, two things. Number one, we can't see your face right now.

A. How about now?

Q. That's much better. Thank you.

A. I'm not seeing anything, you know, but it's okay. Go ahead.

Q. Okay. So my question is about the sales reports first.

A. Yes.

Q. You said Italnord was under the same obligation under the lease to provide monthly sales reports to Simon?

A. Yes.

Q. And as far as you know, they abided by that obligation?

A. To my knowledge, yes.

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performance?

A. Yes.

Q. I'm going to show Exhibit 55.

A. I cannot see anything. I have to ask for some help here. I can't see. I can't see anything. Let me just ask for some help. Now it's better. Yeah.

Q. Before I get to that exhibit, Dr. Hamad, did Simon share you with concerns about the store's performance?

A. Multiple times, yes.

Q. Can you recall some of those occasions?

A. Well, he called, you know, complaining that the store is not performing very well, and the sales are going down, and he have to do something about it, otherwise he will stop -- you know, he might have to eject us from the store [sic].

Q. They suggested you all may have to leave the store?

A. Yes.

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2 Q. Do you recall when that was,
3 when that conversation took place?

4 A. He called multiple times in '14
5 -- I mean, mainly before the end.

6 Q. When you say -- I'm sorry to
7 interrupt you. When you say "he," who
8 are you referring to?

9 A. Todd Eads.

10 Q. Who is Todd Eads?

11 A. He's in charge of the
12 properties.

13 Q. Of Simon?

14 A. Simon, yeah.

15 THE ARBITRATOR: For Simon?

16 THE WITNESS: Yes.

17 Q. You were saying that he called
18 multiple times?

19 A. He called multiple times, yeah.
20 He had concerns that somehow you guys
21 are not doing well, and he was afraid
22 one day we might have to pack and leave
23 the store and it will be legal issue
24 for the lease and etcetera, etcetera.

25 Q. Did Mr. Eads make any

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2 A. Yes.

3 Q. This is after you had met with
4 Luca and the CEO in November of 2012,
5 right?

6 A. Yes.

7 Q. Earlier you testified at the
8 meeting, Forall hadn't agreed to
9 additional discounts, but later sent an
10 e-mail agreeing to additional
11 discounts; do you recall that?

12 A. That's true.

13 Q. Does this e-mail refresh your
14 recollection as to what additional
15 discounts Forall agreed to provide?

16 A. That's -- it never happened. It
17 never happened. They said they going
18 to do it, but it did not happen. I
19 don't recall this happened [sic].

20 Q. That was my next question, Dr.
21 Hamad. This e-mail was laying out
22 additional discounts that Forall was
23 promising, right?

24 A. Yes.

25 Q. And did you receive those

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2 suggestions to you about what could be
3 done?

4 A. Well, somehow at the end he was
5 not convinced at all that the store
6 will be successful, and, you know,
7 honestly he lost hope in Pal Zileri
8 performing very well in that area.

9 And he said, you know, around --
10 before the end, he said he's not going
11 to renew the contract. It's going to
12 be like this. He might have to ask us
13 to leave.

14 MR. LEWIS: I apologize.

15 There's another exhibit that I
16 want us to go to, but I don't
17 want to forget to show this to
18 you either. So Joint Exhibit 21.

19 Q. Dr. Hamad, can you see my screen
20 now?

21 A. Yes, I do.

22 Q. Okay. So this is an e-mail Luca
23 Spano sent to you, your brother, some
24 others are CC'd in January of 2013; do
25 you see that?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 additional discounts?

3 A. No.

4 Q. So when Mr. Entebi from Italnord
5 was operating the store, and more
6 specifically, when he informed that he
7 would no longer continue operating the
8 store after the expiration of the
9 initial term, did there come a time
10 that you had a conversation with Simon
11 about entering into a letter agreement?

12 A. Yes.

13 Q. And do you recall when that was?

14 A. I think it was around that time
15 around that time -- yeah. After --
16 there was period of one and a half
17 month, around that time, that we had a
18 discussion with Simon.

19 Q. Do you recall entering into a
20 letter agreement with Simon in October
21 of 2013?

22 A. Yes.

23 Q. Do you recall what the nature of
24 that agreement was?

25 A. He want us to sign a paper to

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2 find a tenant for the store.

3 Q. To allow Simon to find a new
4 tenant?

5 A. Yeah. But it takes sometimes
6 one and a half years, six months, a
7 year, one and a half year. It depended
8 on the customer, so --

9 Q. There's been discussion about
10 whether Mr. Entebi and Italnord would
11 have been allowed to take over the
12 lease?

13 A. That was in the beginning.

14 Q. I understand. What was your
15 understanding as to whether or not
16 Italnord and Mr. Entebi would have been
17 able to take over the lease on their
18 own?

19 A. Well, when they would sign the
20 contract they -- the discussion was
21 Mr. Entebi had no credit in this
22 country, so give him a time to have a
23 credit, then he would apply to take
24 over the lease.

25 Q. So was that the reason that

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2 transfer the lease to you. Please be
3 informed that this will not be possible
4 for several reasons. And the main one
5 is that your corporation is new in the
6 USA and they will not accept it. The
7 second reason is that you want to
8 sublease and it will take approximately
9 three, four months," etcetera, but you
10 see in this first part the first reason
11 is that the corporation is new in the
12 USA, and they will not accept it; do
13 you see this?

14 A. Yes.

15 Q. Is that consistent with your
16 earlier testimony that Simon would not
17 accept Mr. Entebi and Italnord as
18 tenants on the lease?

19 A. Yes.

20 Q. And that required Sarah to stay
21 on the lease to facilitate Italnord
22 operating the store, right?

23 A. Yes.

24 MR. BROWN: Objection.
25 Arbitrator Farber, we have a

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2 Sarah had to remain on the hook for the
3 lease?

4 A. Yes.

5 Q. Is it because Mr. Entebi wasn't
6 able to -- Simon wasn't going to
7 approve Mr. Entebi on the lease
8 initially; is that your understanding?

9 A. Yes. That's the reason, yeah.

10 Q. This is Exhibit 52 -- excuse me
11 53, Joint Exhibit 53. Can you see this
12 exhibit on my screen, Dr. Hamad?

13 A. Yes.

14 Q. And you see -- well, first of
15 all, this is August of 2013 correct?

16 A. Correct.

17 Q. And this is an e-mail from Luca
18 Spano to Alfonso Entebi copying your
19 brother?

20 A. Yes.

21 Q. All right. And I'll just read
22 this really quickly. "I just spoke
23 with Dr. Amar Hamad, and he is telling
24 me now that you, Mr. Entebi, are asking
25 to have in writing that the mall will

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 fully integrated agreement here.
3 This is just getting attempting
4 to parole evidence in. I just
5 raise a blanket objection to it.
6 The agreements speak for
7 themselves.

8 THE ARBITRATOR: I certainly
9 note your objection. But it's
10 arbitration, and the parole
11 evidence rule is an evidence
12 rule. Therefore, I'm going to
13 allow the testimony. Overruled.
14 You can answer it.

15 A. The answer is yes.

16 Q. I was going to repeat or ask the
17 court reporter to read it back for us.

18 MR. BROWN: Is it -- I don't
19 think there's a question pending,
20 but can I ask for a bathroom
21 break? I actually myself just
22 personally need to --

23 THE ARBITRATOR: Absolutely.
24 It's a little early for our
25 afternoon break. Let's just take

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five minutes, everyone.

(Whereupon, a recess was
taken.)

THE ARBITRATOR: Okay.
Let's proceed. Mr. Lewis, go
ahead.

Q. Dr. Hamad, we were discussing
the circumstances surrounding
Mr. Entebi informing Sarah that it
would -- Italnord would no longer
continue operating the store after the
expiration of the term; do you recall
that?

A. Yes.

Q. Were there discussions after
Italnord informed Sarah that it
wouldn't continue operating the store
about bringing in a new tenant to run
the store?

A. Yes.

Q. Do you know if Forall was a
party to those discussions about
bringing in a new tenant after Alfonso
to operate the store?

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tenant; do you see that?

A. Yes.

Q. Okay. I'm going to read this
very quickly. "Hi, Amar, as we talked
and explained, I asked you to please
confirm to me and Paolo Torello-Viera,
the CEO Americas at Pal Zileri, that we
are authorized and can go forward with
the prospect tenant for a possible
takeover of the store"; they refer to
it as a "takeover of the store," right?

A. Yes.

Q. This is in October of 2014?

A. Yes.

Q. And your brother responds to the
entire group on the e-mail. "Okay. Go
and proceed. Thank you"; do you see
that?

A. Yes.

Q. And then Alfonso writes back,
"Hi, Amar, Paolo Torello-Viera, CEO
Forall USA, Pal Zileri, is advancing
with the prospect of a new tenant.
Please confirm that we can send a copy

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A. Yes, they were.

Q. All right. I'm going to show
you joint Exhibit 54. Dr. Hamad, can
you see my screen?

A. Yes, I can.

Q. And I think this is particularly
important, and this is an exhibit that
we haven't covered so far. We've got
Wednesday, October 8, 2014, this is the
earliest e-mail in the string; do you
see that?

A. Yes.

MR. BROWN: Objection to the
characterization of counsel's
testimony there.

THE ARBITRATOR: Let's wait
till there's a question. Let's
hear the question.

MR. BROWN: Okay.

Q. This is an e-mail from
Mr. Entebi to your brother. It
includes the CEO of Forall Paolo
Torello-Viera and some others and it
says -- it's about Las Vegas Prospect

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of the executed lease agreement between
Sarah and the mall"; do you see that?

A. Yes.

Q. What was your understanding of
about what the CEO of Forall was doing
in this portion of time in October of
2014?

A. As I mentioned to you before, we
were on the hook for the lease, so it
was time to find somebody to take over
the store from Alfonso Entebi, and to
continue with the same thing, but our
problem that we are -- we were
responsible for the lease, so they had
to ask for the lease.

Q. So with them asking for a copy
of the lease now -- I mean, it reads to
me, and I don't want to testify here,
but you see that they're saying
"takeover of the store," and you're
giving them permission to find someone
to take over the store?

A. To take over the store from
Alfonso, yes.

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Q. And so my original question to you was if you knew if Forall was part of the discussion about finding a new tenant to take over the store in October of 2014, and your answer is?

A. Yes. They were aware of it, yes.

Q. They were asking for your permission along with --

A. They were asking permission to do it, yes.

MR. BROWN: Objection.

THE ARBITRATOR: Sustained.

Counselor, I can read it.

Clearly just asked for permission to get a copy of the lease.

MR. LEWIS: Arbitrator

Farber, I beg to differ. It

says, "I ask you please confirm

that we are authorized and can go

forward with the prospect tenant

for a possible takeover of the

store."

THE ARBITRATOR: I

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DIRECR-EXAMINATION OF DR. B. HAMAD do?

A. Let me read it here. Their desire to close for business and surrender tenant lease hold to the landlord, yeah.

THE ARBITRATOR: Have you ever seen this before, Dr. Bachar

Hamad? THE WITNESS: I cannot recall exactly 100 percent, but most likely I saw it, yeah.

Q. Well, I would draw your attention to the signature line there; is that your signature?

A. Yes, that's my signature.

Q. Does that refresh your recollection as to --

A. Yes.

Q. That is your signature on the document, correct?

A. That's my signature.

Q. So in here -- and I want to provide some context. Earlier in October, the CEO of Forall asked Sarah for permission to find a new tenant to

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understand. Let's move on.

MR. LEWIS: Thank you.

Q. So did Forall bring in a new tenant right away after October of 2014 when you exchanged these e-mails?

A. They were -- no. They brought mid March. They came over themselves.

Q. But in October of 2014, what was being discussed. It didn't happen then, right?

A. It did not happen, no.

Q. So instead you had to enter into a letter agreement with Simon?

A. Yes.

Q. And I'll show you a copy of that agreement. Dr. Hamad, can you see my screen now?

A. Yes, I see it.

Q. Is this your letter agreement dated October 23, 2014, between Sarah and Simon?

A. Yes.

Q. And what is your understanding of what this agreement allowed Simon to

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DIRECR-EXAMINATION OF DR. B. HAMAD take over the store along with Alfonso, correct?

MR. BROWN: Objection.

THE ARBITRATOR: What's the objection?

MR. BROWN: He's delving into, with all due respect, fantasy. I don't understand the question.

THE ARBITRATOR: Counsel, why don't you restate it. You said, "To take over the store with Entebi."

MR. LEWIS: Okay.

THE ARBITRATOR: I'm not sure you meant they were looking for someone else to work together with Entebi. Why don't you rephrase?

MR. LEWIS: Thank you, Mr. Farber.

Q. We just read an e-mail, Dr. Hamad, where Alfonso, along with Paolo, CEO with Forall, was requesting

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 permission from Sarah to find a new
 tenant to operate the store, take over
 the store was --

A. Take over the store.

Q. And then that same month you're
 entering into a letter agreement with
 Simon. "Whereby tenant currently
 occupies the premises under the lease.
 It is the landlord's understanding that
 tenant now desires to close premises
 for business, and surrender tenant's
 lease hold to landlord. Therefore,
 tenant wishes to authorize landlord to
 begin a search for a suitable
 replacement tenant for the premises";
 do you see that?

A. Yes.

Q. So we had Forall discussing
 finding a new tenant, and here you are
 asking Simon for the authorization to
 have a new tenant, take over the lease;
 do you see that?

A. Yes.

MR. BROWN: Objection.

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 a new tenant coming in and taking over
 the store?

A. Yes.

THE ARBITRATOR: Did anyone
 at Forall ever tell you that?

THE WITNESS: From Forall?

THE ARBITRATOR: Yes.

THE WITNESS: Paolo.

THE ARBITRATOR: Okay. All
 right. You can pursue that if
 you chose to or on cross.

Q. Since you said that and I think
 that is an important point, Were there
 conversation that you were a part of
 surrounding these documents that you
 just reviewed that you think it would
 be important for Mr. Farber to know
 about?

THE ARBITRATOR: No. No.
 I'm going to sustain that one.

We're not going to ask the
 witness to just tell me about
 conversations he thinks I think
 are important. Let's have a

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 That's testimony from counsel.

It's not a question. It
 misstates, actually, the facts.

THE ARBITRATOR: Guys, I've
 read this letter agreement. I
 have a handle on what it says,
 and having the witness do this is
 not really that helpful, except
 to the extent that it gives his
 own state of mind, for whatever
 that's worth, if it's worth
 anything evidentiary wise. So he
 can answer the question, and we
 can proceed.

MR. LEWIS: Let me restate
 the question.

Q. Dr. Hamad, do you see these
 connected, the e-mail being connected
 with the letter agreement in the time
 and what's being asked for?

A. Yes.

Q. Is it your understanding that
 Forall was fully aware that in October
 of 2014, what was being considered was

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 specific question. Because I've
 only met him today. I don't know
 if he can figure out what I think
 is important. So let's restate
 it, all right?

MR. LEWIS: Fair enough.

Q. Did you have conversations with
 Simon surrounding these agreements,
 Dr. Hamad?

A. Yes. With Simon, yes.

Q. Can you share with us the nature
 of the conversation with Simon
 surrounding these agreements and the
 e-mails that we read?

A. Well, Simon was all the time
 extremely unhappy about, again, the
 performance of the store. So he was
 giving us time, and more time, and more
 time to turn the store around.

And he said clearly that if it's
 not going to perform, he will not give
 the store to Pal Zileri or to anybody
 related to Forall.

Q. So Simon was resistant to giving

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 the store over to a tenant that Forall
3 found?

4 A. Yes.

5 Q. Did you have conversations with
6 Paolo around these exhibits and the
7 e-mail and the letter agreement that
8 we're seeing here?

9 A. That was a big discussion, and
10 heated discussion. If you want to hear
11 it, I can tell you.

12 Q. Share it with us, please.

13 A. At that time, I heard that Paolo
14 was asking for -- to find a tenant, but
15 he was asking for money for himself,
16 and two-month free rent.

17 So he asked for \$150,000
18 brokerage fee, and two-month rent free
19 in the end of February to find a
20 tenant.

21 Q. Let me -- let's break that down.
22 You're saying that Paolo asked for a
23 brokerage fee --

24 A. \$150,000 brokerage fee and
25 two-month rent free for January and

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 Q. Just so the record is clear, so
3 you did not agree to those terms?

4 A. No.

5 Q. And instead you said you entered
6 into the letter agreement with Simon?

7 A. Yes.

8 Q. Now, did it come a time where
9 Sarah and Forall resumed discussions
10 about a different tenant coming in to
11 take over the store?

12 A. That was when the -- I think
13 Amar had a discussion with him for
14 Forall to take over in March '15 and I
15 mentioned to you in the beginning of
16 this discussion, there was a drag on
17 for one and a half.

18 They force us to pay the rent
19 for Alfonso to stay in the store until
20 they get ready, quote-unquote get
21 ready, and that was one -- 45 days
22 after the expiration date of Alfonso.

23 Q. So were you part of the
24 discussions with Forall about Forall
25 coming in and running the store?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 February.

3 Q. And this would be to -- to --

4 A. To find a new tenant.

5 Q. In consideration for his help in
6 finding a new tenant?

7 A. Yes.

8 Q. And did you agree to those
9 terms?

10 A. Well, I tell you it was a heated
11 discussion on the phone, and he didn't
12 talk to me after that at all.

13 THE ARBITRATOR: Didn't hear
14 the last thing: He didn't
15 something to me at all.

16 THE WITNESS: We had a
17 heated discussion, how he can do
18 stuff like this, and he hung up
19 on me and walk away [sic].

20 THE ARBITRATOR: All right.

21 Q. So my question was: Did you
22 take Paolo up on his offer under those
23 terms?

24 A. What do you mean "take him up"?
25 Offer him 150, no.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 A. No.

3 Q. Your brother handled that?

4 A. Yes, my brother.

5 Q. Do you recall having to ask
6 Simon to rescind this letter agreement;
7 do you recall?

8 A. Yes, I do.

9 Q. Was that -- how did that go?

10 A. Well, they said they want to try
11 one more time, the company will like to
12 take over and try one more time, and I
13 have to go -- Simon was, you know,
14 extremely unhappy about the
15 performance.

16 He was calling all the time.
17 "What's going on with you guys? You
18 are not sell. I'm afraid they going to
19 shut down. They going to close and
20 walkway [sic]."

21 He was directing the discussion
22 to me. So I had a discussion with him.
23 I asked -- you know, just give us one
24 more chance, and hopefully we will turn
25 it around, and he did.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 Q. You mentioned an agreement to
3 rescind this letter agreement that we
4 just looked at?

5 A. Yes.

6 Q. And I'll show that exhibit.

7 MR. LEWIS: Mr. Farber, when

8 -- I actually need a break. I
9 was wondering if right now was a
10 good time for our afternoon break
11 or if you'd like for us to keep
12 going?

13 THE ARBITRATOR: All right,
14 guys. Just before our afternoon
15 break, can one of you tell me
16 what's the number for Flaherty's
17 expert report, the exhibit
18 number? Actually, give me the
19 numbers for both experts.

20 MR. SHAH: The Flaherty
21 report is 38, and the Salsbery
22 report is 39.

23 THE ARBITRATOR: Okay, guys.
24 I've got 3:30. 3:45, let's come
25 back. All right.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 the 2nd or the 3rd.

3 Q. And you recall having
4 conversations with Simon about this
5 issue?

6 A. Yes.

7 Q. Dr. Hamad, can you see my
8 screen?

9 A. Yes, I do.

10 Q. And is this an e-mail from your
11 brother to Paolo Torello-Viera and
12 copying you and others?

13 A. Yes.

14 Q. And this is in June of 2016 when
15 Forall was operating the store; is that
16 correct?

17 A. That's correct.

18 Q. And you see here you write --
19 your brother writes that Simon is
20 getting upset about the delay in
21 payment, to please make sure it is paid
22 promptly by first of July, they're
23 referring to the rent, as far as you
24 know?

25 A. Yes.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 (Whereupon, a recess was
3 taken.)

4 THE ARBITRATOR: Why don't
5 you proceed, Mr. Lewis?

6 Q. Dr. Hamad, before we break --
7 before we took a break, we just
8 reviewed the letter agreement between
9 Sarah and Simon, and we talked about
10 your efforts to get the letter
11 agreement rescinded; do you recall
12 that?

13 Dr. Hamad, can you hear me?
14 You're on mute.

15 A. Yes.

16 Q. So, Dr. Hamad, do you recall
17 having a conversation with Simon about
18 late rent payments when Forall was
19 operating the store?

20 A. With Forall and Alfonso.

21 Q. Entebi?

22 A. Yes. They were concerned
23 because the payment was coming so late,
24 sometimes 26th, 27th of the month.
25 Although, they had to pay by, I think,

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 Q. And so is it your understanding
3 that Forall had been slow in paying the
4 rent when he was operating the store at
5 times?

6 A. Yes.

7 Q. And you had conversations with
8 Simon where they expressed a
9 frustration over that?

10 A. Yes, we did. Multiple times.

11 Q. I'm going to show Exhibit 52.
12 Dr. Hamad, can you see my screen now?

13 A. Yes, I do.

14 Q. Okay. All right. So this is an
15 e-mail that you forwarded to your
16 brother in July of 2015, prior to that,
17 this is an e-mail from Todd Eads to you
18 also July 15, 2015; do you see that?

19 A. Yes, I do.

20 Q. Take a moment to just read this
21 paragraph of Mr. Eads' e-mail, and
22 we'll talk about it.

23 A. Yes. I remember that.

24 Q. Okay. All right. So can you
25 read this part that's at the bottom?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 A. "Hi, Dr. Hamad, any update on
3 setting up a call? Sorry to be a
4 nuisance, but I'm starting to run out
5 of time. MCM, who is the tenant
6 interested in your space, may now also
7 have an opportunity at Crystals. Thank
8 you for your help."

9 Q. And this is an e-mail that your
10 brother was shown, a portion of this
11 e-mail, you write back to Mr. Eads
12 here, and for the sake of time, I'll
13 read it. "Pal Zileri will contact you
14 today," so Mr. Eads, Simon, is not just
15 talking to Sarah about this proposal,
16 they're talking directly to Forall
17 about this proposal, correct?

18 A. That's correct.

19 Q. In fact, Mr. Eads writes to you,
20 "Dr. Hamad, I spoke to Stephen Brown,
21 Pal Zileri's counsel today, Pal
22 Zileri's general counsel, we talked
23 about the proposal, and I am scheduled
24 to have a call with Paolo on Friday.
25 I'm going to forward the proposal I

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 operate the store. I have a
3 proposition that may allow you to
4 continue operating the store per your
5 agreement with Pal Zileri, but at a
6 much lower occupancy cost. Also it
7 would eliminate the personal guarantee
8 for one year of rent, and ancillaries
9 on the existing Pal Zileri lease"; do
10 you see that?

11 A. Yes.

12 Q. "Pal Zileri will relocate to the
13 unit I attached. The unit was just
14 vacated by Stuart Weitzman, which
15 relocated to a larger space. The term
16 will be 18 months. The rent will be
17 20 percent of sales during the term."

18 At that time period of time, was
19 the store having to pay a flat rent or
20 was it a percent of sales?

21 A. Flat rate.

22 Q. And approximately how much was
23 that?

24 A. 74,000 a month.

25 Q. Would going to 20 percent of

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 sent you to Stephen. I am hopeful that
3 we can make progress on today. Thank
4 you for your support. Please continue
5 to help if you can." What is the
6 proposal as you understand it?

7 A. He was proposing to move him to
8 a different store in the mall because
9 all of us were complaining about the
10 high rent, and he asked him to move to
11 an area where they pay less rent.

12 Q. And --

13 A. No answer.

14 Q. So this is the same e-mail, same
15 e-mail, 7/15/2015. This is another
16 portion of it, and here we've got
17 Mr. Eads sending you an e-mail.

18 And again, for the sake of time
19 I'll read the pertinent parts. "As I
20 mentioned last week, we have a
21 prospective tenant for the Pal Zileri
22 space, and we'd very much like to move
23 forward with the termination of the
24 lease. I understand that you've
25 committed to Zileri to continue to

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 sales be more or less than that amount?

3 A. Big time less.

4 Q. What was that?

5 A. Big time less. Because we would
6 be charged rent based on how much they
7 sell. If they sell 50,000 it will be
8 \$10,000 instead of 74,000.

9 Q. Okay. And so that was an e-mail
10 to you, and that's late June 2015. And
11 then we have an e-mail from you to Mr.
12 Eads asking questions about the
13 proposal, right, whether you would be
14 compensated to help build out the
15 space, if it was possible to reduce the
16 percentage of rent, etcetera; do you
17 see that?

18 A. Yes.

19 Q. And then moving up, we get to
20 the portion of the e-mail -- there is a
21 request for a phone call; do you recall
22 whether you had a phone call with Mr.
23 Eads on July 8, 2015?

24 A. I did.

25 Q. And what was the nature of that

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 call?

3 A. That no one was answering. That
4 he was frustrated because neither
5 Forall or anyone from this company
6 answered him about this proposal.

7 Q. So, again, the point I want to
8 take away from that is: This
9 conversation -- this proposal is not
10 only being presented to Forall --
11 excuse me -- to Sarah, it's being
12 presented directly to Forall at the CEO
13 level?

14 A. Absolutely true.

15 Q. And so again, this is where we
16 get into the discussion where we
17 started discussing the offer with the
18 attorney. We'll get back to you ASAP.
19 And here it's like -- "Sorry to be a
20 pest, but please let me know when we
21 can discuss your potential location,
22 discuss with your attorney, happy to
23 work with your attorney, if you want to
24 go that route."

25 So Mr. Eads is talking to you,

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 considerable time talking about a
3 six-month notice requirement that went
4 into the management agreement between
5 Forall and Sarah; are you familiar with
6 that requirement?

7 A. Yes, I am.

8 Q. And what is your understanding
9 of what that six-month notice period
10 was, for what was supposed to be
11 accomplished during that period?

12 THE ARBITRATOR: Let me just
13 say the following, although there
14 has not been an objection. In
15 arbitration we try to avoid
16 duplicative testimony. We had
17 the same thing from the other Dr.
18 Hamad, and, you know, I just
19 don't know if this is going to
20 add anything. It's kind of like
21 the last bit of testimony. It
22 was the same thing from the other
23 Dr. Hamad, so I would urge you to
24 focus on new areas that we
25 haven't already covered.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 and following up with you, and then per
3 this part of the e-mail, he talks about
4 having a similar conversation with
5 Stephen Brown, correct?

6 A. Correct.

7 Q. Okay. Any doubt in your mind
8 that Forall was aware that Simon was
9 attempting to find a new tenant to take
10 over the space in July of 2015?

11 A. No doubt.

12 Q. Did they express to you any
13 objection to Simon finding a tenant to
14 take over the store in July of 2015?

15 A. No, they did not.

16 MR. BROWN: I had an
17 objection to that question.

18 THE ARBITRATOR: I've heard
19 the answer, but what was the
20 objection?

21 MR. BROWN: Not worth
22 repeating.

23 THE ARBITRATOR: Okay.
24 Let's move on.

25 Q. So Dr. Hamad, we spent a

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 I mean, maybe there's some
3 area where the understandings of
4 the two brothers are different,
5 but otherwise, it's likely the
6 same for whatever legal import
7 that has a whole other question,
8 but I'm suggesting that we ought
9 to move it along.

10 MR. BROWN: And I did have
11 an objection to the last
12 question, but thank you, Mr.
13 Farber.

14 THE ARBITRATOR: All right.

15 Q. Mr. Brown showed your brother an
16 exhibit, and not to retread that
17 testimony, but there's an exhibit where
18 in February of 2016 where Simon asked
19 you to complete some paperwork so that
20 they could continue on trying to find a
21 replacement tenant, and my question to
22 you is: Did you sign any paperwork to
23 release the lease with Simon in
24 February of 2016?

25 A. No, I did not.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 Q. When did you, Sarah, sign
3 paperwork to release the lease to
4 Simon?

5 A. I think around June.

6 Q. June of 2016?

7 A. Yes.

8 Q. Was that before or after Forall
9 had informed you that they would not
10 extend the terms of their operation of
11 the store?

12 A. After they informed me that
13 there is no way they're going to extend
14 it to Pal Zileri, they said, "No.
15 Enough is enough," and that's it.

16 Q. Who said that, Simon?

17 A. Simon.

18 Q. Now, my question was: Was that
19 before or after Forall had informed
20 Sarah that it will not continue
21 operating the store after September of
22 2016?

23 A. You mean before March or after
24 March?

25 Q. That's correct.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 document --

3 THE ARBITRATOR: I couldn't
4 hear you, Mr. Brown. What's the
5 basis?

6 MR. BROWN: It's a
7 mischaracterization of the
8 written document that we've all
9 seen at this point, so I find it
10 objectionable.

11 THE ARBITRATOR: Well, I'll
12 take his answer, but I do know
13 what the document says. Go
14 ahead. What is your answer? You
15 want to repeat it?

16 Q. He did answer.

17 A. I'm sorry.

18 THE ARBITRATOR: Go ahead,
19 Mr. Lewis.

20 Q. I'll repeat it so the record is
21 clear. So you signed the paperwork to
22 relinquish the lease -- excuse me -- to
23 relinquish the lease to Simon after
24 Simon had informed you that it would
25 not extend or go forward on the lease

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 A. He was in constant contact with
3 me all the time, and he -- I think when
4 I told him that they probably are not
5 going to renew, he said, "Either way,
6 I'm not going to give them the space
7 anymore, even if they agreed."

8 Q. My fault. Because it was a poor
9 question. Let me ask it differently.

10 You said you didn't sign any
11 paperwork to relinquish the lease to
12 Simon until June of 2016?

13 A. Yes.

14 Q. Forall informed you that they
15 wouldn't continue on managing the store
16 after September of 2016, they informed
17 you that in March of 2016, correct?

18 A. Yes.

19 Q. Okay. And Simon had informed
20 you that they would not continue on
21 with the Pal Zileri brand in that store
22 in February of 2016, correct?

23 A. Correct.

24 MR. BROWN: Objection.

25 Objection to that question. That

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 with Forall with the Pal Zileri brand,
3 correct?

4 A. Correct.

5 Q. So Dr. Hamad, do you remember
6 when the store closed?

7 A. I think around August -- August
8 8, 9.

9 Q. Is that 2016?

10 A. 2016.

11 Q. Did you hear from Forall in
12 September of 2016?

13 A. No.

14 Q. Did you hear from Forall in
15 October of 2016?

16 A. No.

17 Q. When's the next time you heard
18 from Forall after the store closed
19 August 9, 2016?

20 A. We didn't hear anything after
21 that, no.

22 Q. At some point in time you heard
23 from Forall, correct?

24 A. 2017.

25 Q. And is that when you received

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 the demand letter?

3 A. Yes.

4 Q. And that was in November of
5 2017, correct?

6 A. Correct.

7 MR. LEWIS: Mr. Farber, I
8 need to check my notes, please, I
9 may not have anything further.

10 THE ARBITRATOR: Okay.

11 (Whereupon, a recess was
12 taken at this time.)

13 Q. Dr. Hamad, you understand that
14 there are several contracts in place,
15 several contracts at issue in this
16 arbitration, right?

17 A. Yes.

18 Q. You understand there's a license
19 agreement, two management agreements,
20 an asset purchase agreement, and
21 several others, correct?

22 A. Yes.

23 Q. And you understand what the
24 language says in these contracts as it
25 relates to Sarah's continuing

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 no -- nothing mentioned about
3 continuing with the license agreement.

4 Then all of a sudden somebody
5 came, Luca Spano, and I think the rest
6 of the legal team, questioning what
7 happened if Simon would go and take a
8 look at the lease. We are not allowed
9 to operate the store. It's not for
10 sublease. Then that was inserted in
11 that -- in that -- in the second draft.

12 And when we asked about it, they
13 said, "Well it's not enforceable
14 anyway. Why you have to worry?"
15 Therefore, we never pay attention --
16 actually, we were not concerned, I
17 would say, about this license agreement
18 to be enforceable, because all the time
19 we heard from them -- we heard it's not
20 enforceable.

21 But the biggest fear was: If
22 Simon would come and take a look at the
23 contract, he will say, "Okay, well, you
24 are not the guy who I give the lease
25 to. Why you are standing in my store?"

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 obligation under the license agreement,
3 correct?

4 A. Correct.

5 Q. The language says what it says,
6 right?

7 A. Correct.

8 Q. Okay. I want you to just state
9 for Mr. Farber, though, why it is that
10 you specifically take the position that
11 Sarah was released from its obligation
12 under the license agreement after the
13 store closed?

14 MR. BROWN: Objection.

15 Calls for a legal conclusion or
16 opinion.

17 THE ARBITRATOR: Overruled.

18 I'm not taking it as a legal
19 conclusion. I'm taking it as his
20 understanding.

21 You can answer the question.

22 A. All right. There is multiple
23 problems with this contract. When
24 Alfonso tried to take over the store,
25 and we -- in the first draft, there was

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 I'm going to kick you out right away."
3 So that's number one.

4 Number two, never -- I was under
5 pressure from -- from Simon to perform,
6 and the license agreement, you know,
7 per se, was -- was never, you know,
8 enforced even at the level of the first
9 CEO. With his -- you know, I have to
10 say he was nice guy and very
11 cooperated.

12 But some out down the road it
13 came at the end, never came out in the
14 last three or four years when they
15 operated the store. It came only out
16 at the end, and we were under a lot of
17 pressure from Todd Eads to let go of
18 the store because definitely he was not
19 going to continue with Pal Zileri
20 [sic].

21 So that's why my understanding,
22 you know, regarding this license
23 agreement that it was inserted, and the
24 second draft, never in the first draft,
25 and the reason for them was, "Well

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 Simon can kick us out of the store at
3 any time if he found out we were going
4 to try to take over or actually had
5 taken over." That's my understanding
6 of the license agreement.

7 Second issue, Alfonso paid
8 everything for us in the store,
9 including the mannequin. He even paid
10 for registry, you know, computer, all
11 the computers, you know, mannequin --
12 he paid part of what we paid for. So
13 it was completely for Alfonso to
14 operate the store. We never interfere
15 with the management or the sale or the
16 buy of the merchandise during the three
17 years when they're operating [sic].

18 And there was a lot of problem
19 with management also. I don't know if
20 I have the time to discuss it here.
21 But the main issue was for the license
22 agreement, you know, this was inserted,
23 was not our understanding that it had
24 to -- you know it's enforceable.

25 And Luca Spano, why you didn't

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 a new tenant. It doesn't happen in one
3 day.

4 And the purpose of the six
5 months, is not going to take the store,
6 it's just to find a new tenant.
7 Sometimes it takes more than six
8 months, a year. We are on the hook for
9 the lease.

10 So we have to pay every month
11 until they find a new tenant, and that
12 was the purpose of the six-month, for
13 them to allow us to turn the store to
14 the mall to find a new tenant and they
15 knew about it. All of them knew about
16 this issue.

17 Q. Thank you, Dr. Hamad.

18 MR. LEWIS: That's all I
19 have for now, and we'll see if we
20 need to do a redirect.

21 THE ARBITRATOR: Thank you
22 very much, Mr. Lewis. Thank you,
23 Dr. Bachar Hamad.

24 Mr. Brown, are you handling
25 this one?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 ask him yesterday what was the meaning
3 of the license agreement? All the time
4 for the two tenants of Pal Zileri and
5 for Alfonso, the biggest fear for them
6 was if Simon find out that they are
7 operating, they kick him out in the
8 same day.

9 Q. Okay. I appreciate that. And I
10 know you waited a long time for your
11 day in court, so I'm glad you had an
12 opportunity to share that.

13 I would ask you if it factors
14 into your understanding the discussions
15 about the six months notice period and
16 turning the store back into Simon if
17 the store didn't perform?

18 A. Can I answer? I don't know.
19 Any objection or --

20 THE ARBITRATOR: I didn't
21 hear the word "objection," so you
22 can respond.

23 A. The six-month -- For all know --
24 they knew about this six-month from the
25 beginning. That it takes time to find

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 MR. BROWN: I'm handling it.

3 Thank you, Mr. Farber.

4 THE ARBITRATOR: Dr. Bachar
5 Hamad, on cross examination of a
6 party, please be advised that
7 Mr. Brown is the boss of the
8 examination. So I don't want you
9 to argue with him. Your job is
10 simply to listen to his question,
11 and unless Mr. Lewis says the
12 word "objection," you just answer
13 it as directly and as succinctly
14 as you can. That means if the
15 answer to the question is "yes,"
16 "no," "I don't remember," that's
17 fine.

18 Now, there are going to be
19 times where you want to explain,
20 because you think that the
21 question he's asking you is not
22 going to give me the full picture
23 and you'd like to explain. Do
24 not explain unless he asks you or
25 I ask you.

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What you can do is: On your pad, make a note of what the area is that you'd like to explain.

And when Mr. Brown is finished questioning you, I'll give you an opportunity to chat with Mr. Lewis and Mr. Shah, and they can decide, if they want to, on what's called "re-direct" ask you questions to bring out your explanations.

So remember, no fighting with Mr. Brown. He is the boss of the examination. Just listen to his question and answer. Usually the objective of most witnesses in cross examination is to finish it. So what you want to do is you just want to listen and respond to his questions.

Mr. Brown, why don't you proceed, please?

MR. BROWN: Thank you.

* * *

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as February of 2016, signed a letter agreement to find a replacement tenant with Simon?

A. That's not true.

Q. And isn't it true that Simon then started putting things in work -- in the works such that they got MCM to commit to a new lease starting in August 2016?

A. That's not true.

Q. Are you aware, are you not, sir, that there's an e-mail between you, Todd Eads at Simon, in February 2016 where you're telling him that you're going to sign the paperwork?

A. But I did not sign it. He was discussing it with me the option at that time. He was pushing for -- I'm sorry. Say it again.

THE ARBITRATOR: I think you've answered "no".

A. No. The answer is: No.

Q. Did you produce that paperwork in connection with this lawsuit that

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CROSS-EXAMINATION BY
MR. BROWN:

Q. Good afternoon, doctor.

A. Good afternoon.

Q. You just indicated that it takes time to find a replacement tenant, right?

A. Right.

Q. And Simon found a replacement tenant for your store in the Forum shops as of -- as late of June 2016, right?

A. Yes.

Q. When did they start looking for that replacement tenant?

A. I don't know when they started -- go ahead.

Q. After you what?

A. I think after we signed the -- the agreement.

Q. Which agreement?

A. With the -- with Pal Zileri that they not going to take the store [sic].

Q. Isn't it true that you, as early

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Mr. Eads had sent to you in or around February 2016?

A. Did I produce that paper as a lawsuit?

Q. Yes.

A. That was the lawyer work [sic]. I don't know what happened in that.

Q. Have you seen that -- any of that paper that Mr. Eads was asking for -- had given to you in February 2016, in any of your preparation for this trial?

A. The e-mail he sent me. The e-mail Eads sent me; is that what you're talking about?

Q. Yes, I am.

A. I know this e-mail for long time.

Q. Okay. So in February 2016, you were talking to Mr. Eads about surrendering the lease, though, right?

A. We were talking about the store altogether. He was pushing the -- go ahead.

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Q. So you've indicated that you were under pressure from Simon on the store, right?

A. For long time. Not only in February. For long time. For the last five years.

Q. Did Forall make you execute the lease?

A. With whom?

Q. With Simon.

A. Did Forall make me execute the lease? The lease was between me and Simon.

Q. Right. Forall was not party to that agreement, right?

A. I don't know what you mean by this.

THE ARBITRATOR: Did they sign the lease, that's what he means, as far as you know?

THE WITNESS: No.

Q. And did you negotiate the terms of the lease with Simon?

A. Yes, I do.

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Q. You never heard that name before?

A. No.

Q. Was he not listed as a coowner in your proposed business plan to Pal Zileri?

A. Absolutely not.

Q. Who is Mr. Simon Jaohari, J-A-O-U-H-A-R-I?

A. Absolutely no idea.

Q. Who is Mr. Jmal Sarioul?

A. That's friend of mine.

Q. How would you pronounce this name, sir?

A. Sarioul.

Q. And did Mr. Sarioul have retail experience?

A. No.

Q. He didn't have 25 years of retail experience?

A. Not to my knowledge.

Q. Did he not own and operate various businesses in Las Vegas area for 10 years?

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Q. And it was a ten-year lease, was it not?

A. Yes.

Q. And then once you secured that lease, you brought it to Forall and said, "I can open the store now," right?

A. Yes.

Q. And didn't you and your investor group approach Forall to open a Pal Zileri in Las Vegas?

A. They approached us. There was a mutual interest through a friend, yes.

Q. And you had an investor group, did you not, when you first approached Pal Zileri?

A. We did not have. It was only us.

Q. Who is "only us"?

A. Me and my brother in the company.

Q. Okay. Bear with me one second. Who is Dr. Youssef Kauuas?

A. I have no idea.

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A. You mean high-end?

Q. Yeah. What did he do? How did you know him?

A. He's friend of mine [sic].

Q. Yeah. What kind of friend?

MR. LEWIS: Objection.

THE ARBITRATOR: Hang on.

One at a time, guys. His

question is: What kind of

friend. There was an objection to it.

Mr. Lewis, what's the objection?

MR. LEWIS: Relevance in its entirety. I don't see how this bears upon what happened in 2016, whether Sarah would be on the hook for a license agreement going forward from 2016.

THE ARBITRATOR: It is highly tangential, Mr. Brown, to what I have to decide, but it's cross, and I'm going to give you leeway if you want to pursue it.

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Overruled.

MR. BROWN: I would just
like an answer to it.

Q. Who is he?

A. A friend of mine.

Q. And who introduced you to Pal
Zileri?

A. He is the one who introduced to
Pal Zileri, yes.

Q. And was he part of your initial
investment group when you --

A. No.

Q. How many times did you approach
Sarah -- I mean, did you approach
Simon, the Forum shops, for a reduction
of rent in the time period from when
you opened in September 2011 to when
you turned over management of the store
to Italnord in September 2016?

A. I think we were talking
constantly. We asked him twice to
reduce the price.

Q. Were you considered a pest by
Simon, to your knowledge?

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A. Me, pest by Simon [sic]?

Q. Yeah.

A. No.

Q. Isn't it true that you
approached Simon on multiple occasions
looking to turn back the lease and
therefore that is why they ultimately
were giving you pressure at the time?

A. The other way around.

Q. Was it -- wasn't the rent always
paid for the premises during the
duration of September or maybe even
July 2011 through August of 2016?

A. Not all the time. When Forall
and --

THE ARBITRATOR: You
answered "not all the time." I
got the answer. Go ahead.

Q. Okay. Do you have documents
evidencing the fact that the rent was
-- went unpaid during that period of
time?

A. We do have evidence that they
were delayed. They were paid on the

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27th of the month instead of the 1st of
the month.

THE ARBITRATOR: He just
asked you if you have documents
that the rent was paid late.

THE WITNESS: Yes.

Q. And the only documents that have
been introduced into evidence by your
counsel evidencing that fact was dated
in June of 2016, after the time that
you had agreed and signed the surrender
of lease; do you have anything prior to
that?

A. Yes, we do.

Q. What's that?

A. It's a -- it's a -- it's an
e-mail from -- I think asking Luca to
investigate why there was -- Alfonso
did not pay, and there was a -- when we
got the e-mail at the end saying it was
paid on November -- let me tell you the
exact date. Here we go. April 1,
2015, they paid two months at one time.
4/01/15. I have the paper here in my

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hand.

Q. What paper?

A. I have -- you can read it. Same
two-month not paid, and then they had
to pay in one shot one time, and there
is another e-mail.

Q. What's the date of that?

A. The date is April 1, 2015.

Q. Are you aware --

A. You can see 134,000 for two
months.

MR. BROWN: Rodney, was this
document produced in discovery?

MR. LEWIS: Not only
produced. We used it yesterday.

MR. BROWN: I mean, he's
waving papers in front of me. Is
there a bates label?

MR. LEWIS: Let me get the
exhibit number. This is an
exhibit we showed yesterday.

THE WITNESS: And there is
another one --

THE ARBITRATOR: No. No.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 No. Hang on until he asks
3 another question.

4 Q. Are you aware, sir --

5 THE ARBITRATOR: Hang on,
6 Dr. Hamad. We need to see your
7 face.

8 Q. You alleged in your statements
9 of claims, sir, that the lease was
10 terminated by Sarah because Forall did
11 not pay the rent; are you aware of that
12 allegation?

13 A. Did I say that was not paid, the
14 rent?

15 Q. Yes.

16 A. When did I say this?

17 Q. In the opening statement of this
18 litigation, in the statement of claim
19 submitted by Sarah, that's the
20 allegation; are you aware of that?

21 A. What was I -- everything was
22 handled by the lawyer at that time, and
23 most likely has some copy of e-mails.
24 I don't know. I mean --

25 THE ARBITRATOR: I'm sorry.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 A. He was upset about it all the
3 time.

4 Q. That's not my question.

5 A. The answer is yes. I was -- you
6 know, there was some -- some delays in
7 the payment that upset Simon all the
8 time. That's what I'm saying.

9 Q. Did Simon terminate the lease
10 for the Pal Zileri store because Forall
11 did not pay the rent; is that the
12 reason?

13 A. And poor performance. Both.

14 Q. So is it your testimony that
15 Simon terminated the lease?

16 A. Did Simon terminate the lease?

17 THE ARBITRATOR: That's the
18 question. Is that what you're
19 telling us?

20 THE WITNESS: Simon
21 terminated the lease, yes. Of
22 course he terminated the lease.

23 THE ARBITRATOR: Okay.

24 Q. Sarah didn't surrender the lease
25 by a cancellation of lease that it

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 But I can't see your mouth, so go
3 ahead.

4 A. It was handled by the lawyer. I
5 do not recall exactly what happened.

6 THE ARBITRATOR: The
7 question is: Are you aware of
8 that?

9 THE WITNESS: I'm not -- I
10 don't know. No. Not to my
11 knowledge.

12 THE ARBITRATOR: Okay. The
13 answer is, no, he's not.

14 Q. Did you review the statement of
15 claim that was filed by your lawyers in
16 this case before it was submitted to
17 the Triple A, American Arbitration
18 Association?

19 A. Yes.

20 Q. And in that -- so would it
21 surprise you to learn that one of the
22 key allegations in that statement of
23 claim was that Sarah -- that Simon
24 terminated the lease because Forall did
25 not pay the rent?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 executed, did it?

3 A. Simon terminated the lease.

4 Q. Okay. I'm going to go to
5 Exhibit 429. I'm going to share my
6 screen.

7 Can you see what's on my screen?
8 I'm sorry. This is not the right
9 exhibit. Bear with me. This is the
10 right one. This is Exhibit 429. Okay?

11 A. Yes.

12 Q. And I'm going to scroll through
13 it. If you need me to stop, let me
14 know, but I want to go right to the
15 signatore on this, and is that your
16 name and signature sir?

17 A. Yes. That's my name and
18 signature.

19 Q. And do you recall sending this
20 letter to Simon Property Group Forum
21 Shops in or around September 21, 2012?

22 A. I think so.

23 Q. Do you recall it?

24 A. We sent a letter. I think might
25 be the first letter we sent to him,

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 yes.

3 Q. And at this time, how long had
4 the store been open?

5 A. For about a year.

6 Q. Okay. And is this one of the
7 requests that you made for reduction in
8 rent?

9 A. Yes.

10 Q. And here you say, "A substantial
11 reduction in rent," did you ever
12 indicate how much rent to be taken off
13 the lease?

14 A. No.

15 Q. And do you see here that it
16 says, "Currently the rent makes up
17 43 percent of our expenses to date, and
18 has been as high as 70 percent in
19 certain months"; do you see that?

20 A. Yes.

21 Q. And you negotiated this lease,
22 right?

23 A. Yes.

24 Q. You say, "We have had slash our
25 marketing and advertising budget below

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 shopping spree or any other promotional
3 programs that could have helped our
4 business."

5 A. Yes.

6 Q. So you were badgering, were you
7 not, Simon one year into your lease?

8 A. Well, I don't know if you took a
9 look at the performance of the first
10 year --

11 THE ARBITRATOR: The
12 question is simply were you
13 badgering. He didn't ask for any
14 speech. You can make a note if
15 you want to explain, Dr. Hamad.
16 The question is: Were you
17 badgering? That's all.

18 THE WITNESS: No.

19 Q. And you say, "We realize the
20 economy and consumer spending is
21 largely to blame for the current
22 situation," right?

23 A. Right.

24 Q. How is this, sir, different from
25 any investment that people make into

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 we feel is appropriate for a store
3 brand of our level"; do you see that?

4 A. Yes.

5 Q. And was that true?

6 A. That's true.

7 Q. And do you think that was a
8 recipe for success in a high-end luxury
9 market?

10 A. Well, the recipe for success is
11 to sell the clothes. We're not
12 selling, so therefore we have to
13 modify, according to Luca's advice, to
14 modify things.

15 Q. Okay. Now, you say here,
16 "Therefore, we have approached Forall
17 and the Caesars' management on multiple
18 occasions explaining the problem
19 seeking their help. However, the
20 remedies they offered had minimal
21 effect on the overall store's
22 performance;" do you receive that?

23 A. Yes.

24 Q. "Despite all promises, we were
25 not allowed to participate in any

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 assets or the market or the stock
3 market at large?

4 A. What do you mean by this? The
5 whole economy was down at this time.

6 Q. And your investment in the Pal
7 Zileri store in Las Vegas was subject
8 to market fluctuations as you indicate
9 in your letter here, true?

10 A. It's part of the reason. Not
11 all the reasons.

12 Q. And then you go onto the second
13 page, "We need to discuss a reduction
14 of at least 30 percent of the current
15 rate, which we feel is an appropriate
16 level." What was -- how did you come
17 to that number?

18 A. The rent was very high. And we,
19 with discussion with Luca, he asked us
20 to see if we could get 30 percent to
21 decrease the overhead.

22 Q. Did Luca -- strike that.

23 You then had multiple follow ups
24 with Simon in the fall of 2012, right?

25 A. Yes.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 Q. And did they ever agree to
3 reduce the rent?

4 A. No.

5 Q. Sir, in or around September and
6 October and November of 2012, weren't
7 you in advance negotiations on a Pal
8 Zileri store in Beverly Hills?

9 A. Yes. My brother was handling
10 this. I did not handle it. Yes.

11 Q. Were you part of that group,
12 that investment, that was looking at
13 that opportunity?

14 A. My brother was handling it. I
15 did not have, you know, the whole
16 picture about what was going on.

17 Q. And but you were aware of it,
18 were you not?

19 A. Yes, I was aware.

20 Q. And in fact, you were looking at
21 an opportunity at the Four Seasons in
22 Beverly Hills, right, for a Pal Zileri?

23 A. Just for a sign and small store
24 at that time.

25 Q. Just a sign and a small store?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 copy exhibit may not have this.

3 I have to run that to ground.

4 But this is the -- and
5 perhaps Sohil and Rodney can
6 assist me, but this was an excel
7 spreadsheet that was produced by
8 claimants in connection with that
9 proposal. I believe this is the
10 proposal that was being
11 referenced. It's on my screen.

12 And so hopefully we can just look
13 at it electronically and then we
14 can run this to ground.

15 Q. But Dr. Hamad, have you seen
16 this before, this document?

17 A. No.

18 Q. Do you dispute in any way that
19 this was a document created by or on
20 behalf of Sarah LLC in connection with
21 its proposed venture to Beverly Hills
22 to open a Pal Zileri store?

23 A. Could be.

24 Q. Okay.

25 MR. SHAH: I'm sorry to

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 A. And small store, yeah.

3 Q. Okay.

4 A. For marketing purposes.

5 Q. Okay. And who was Ghanem
6 Musalimi?

7 A. He was the manager in charge of
8 everything.

9 Q. Of your Pal Zileri operation,
10 right?

11 A. Yes.

12 Q. Okay. I'm going to pull up --
13 it's on my screen now, but it's an
14 electronic document that I want to
15 introduce produced by claimant, and
16 it's in the exhibit list. I just have
17 to find it. So this is Claimant's
18 6584?

19 MR. BROWN: It's

20 Exhibit 484, Mr. Farber. I just
21 want to make sure that the excel
22 spreadsheet that was enclosed
23 because Mr. Musalimi is providing
24 a proposal for the new hotel at
25 hotel Four Seasons. The hard

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2 interrupt, Mr. Brown. What
3 exhibit number is the excel?

4 MR. BROWN: I'm having a
5 problem locating it on the fly.
6 But I don't know that's
7 particularly relevant. It was
8 produced by my claimants.

9 THE ARBITRATOR: It's got to
10 be admitted as an exhibit.

11 MR. BROWN: I'm -- either
12 it's in or I'll have to move to
13 get it admitted. We have to take
14 a break because it's not at my
15 fingertips because I had it up on
16 my screen.

17 THE ARBITRATOR: All right.
18 I think you can cover the whole
19 Beverly Hills incident, really,
20 without the exhibit. The
21 document just shows what appears
22 to be part of a very pretty
23 store. So why don't you move on?

24 Q. Dr. Hamad, isn't it the case
25 that you and your brother wanted to get

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 out of Las Vegas and open in Beverly
3 Hills because you thought that to be
4 more advantageous for you at that time?

5 A. No.

6 Q. So -- and you testified that you
7 went to Italy and spoke with the Forall
8 folks and sought various concessions.
9 Did -- were they aware that you were
10 full steam ahead on a Beverly Hills
11 store?

12 A. They were aware of everything.

13 Q. And why did you not proceed with
14 the Beverly Hills store at that time?

15 A. Well, the idea of the Beverly
16 Hills was to attract more customers.
17 Not to open the big store, because
18 nobody can afford to open a big store
19 in Beverly Hills.

20 But again, this matter was
21 handled by my brother and by Luca. I
22 think by Luca and my brother, yeah.
23 They handled it.

24 Q. Do you have -- did you have any
25 documents that show that Luca was

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2 Q. Right after --

3 A. Sorry. Actually, we try to
4 withdrew it because of the discussion
5 was to give opportunity to Entebi to
6 take over the store [sic].

7 Q. Well, wasn't there some
8 discussion about a termination fee that
9 caused you to try to withdraw that
10 agreement right away with Simon?

11 A. No.

12 Q. You don't recall that?

13 A. No. There was no fee.

14 Q. Do you recall your brother
15 writing to Simon saying that -- that
16 letter agreement was signed in mistake?

17 A. I don't recall that letter, no.

18 Q. All right.

19 MR. BROWN: I'm going to
20 move to have Claimant's -- it's
21 bates labeled 9967 and 9968. I'm
22 sorry. I have it in the exhibit
23 list. It's Exhibit 544. Okay.
24 And I'm going to pull that up on
25 screen.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 handling that?

3 A. Luca was handling every aspect
4 of the business because he is the
5 expert. You can ask him; you can ask
6 Luca.

7 Q. All right. You testified about
8 a letter agreement that you signed in
9 October '14 between Sarah and Simon
10 where in it stated that Sarah was
11 interested in finding a replacement
12 tenant and terminating the business and
13 turning over the store to Simon; do you
14 recall that?

15 A. Yes.

16 Q. And that agreement was
17 specifically between Sarah and Simon,
18 was it not?

19 A. Forall was involved.

20 Q. But the agreement, who was that
21 agreement between?

22 A. Between Simon and us.

23 Q. Okay. Did you try to withdraw
24 that letter agreement?

25 A. Yes.

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2 Q. Sir, you could look on what I
3 have on this agreement, this view.

4 THE ARBITRATOR: We don't
5 have it yet, Mr. Brown, or at
6 least I don't.

7 MR. BROWN: Sorry. Here we
8 go.

9 Q. And this is dated -- an e-mail
10 from Amar to L. Arnold at Simon dot
11 com. And it says, "Here is the
12 document for Mr. Bachar Hamad. Please
13 review and let us know if there is
14 anything else needed. Thank you."

15 A. Okay.

16 Q. And then Amar writes back later
17 that morning, "I have a question on
18 behalf of B Hamad. What is the
19 termination fee, because that might
20 affect finishing the deal and is there
21 a way to call you"; does this refresh
22 your recollection about a termination
23 fee discussion?

24 A. This termination fee with whom?

25 Q. I'm not sure. I'm asking you if

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 this refreshes your recollection at
3 all.

4 A. No, it does not.

5 Q. And then at 9:25 -- I'm trying
6 to get this best view -- your brother
7 writes to L. Arnold, "Please be
8 informed that the document is signed by
9 mistake. It will be executed when we
10 know what is the termination fee and
11 when our lawyer gives the final okay.
12 Thank you for your cooperation"; do you
13 see that?

14 A. Yes, I see that.

15 Q. Do you know what this is about?

16 A. No.

17 Q. Later on Mr. Amar says,
18 "Discussed with lawyer this morning.
19 We will proceed with agreement once we
20 know what is the termination fee or --
21 are -- are -- this is a typo -- or,
22 O-R, A-R-E, until there -- until then
23 this agreement cannot be executed and,
24 please, again, if you can e-mail me
25 your phone number, etcetera"; do you

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 again, was the question, if I
3 remember correctly.

4 THE ARBITRATOR: Did you --

5 THE WITNESS: I don't
6 remember.

7 THE ARBITRATOR: Why don't
8 you restate the question because
9 I see the 16th. Why don't you
10 restate it, Mr. Brown?

11 MR. BROWN: Okay.

12 Q. You -- Amar sends this to you on
13 January 16, 2015 and it says, "Dying";
14 do you know why he was sending it to
15 you that way and with that message?

16 A. I don't know.

17 MR. LEWIS: Objection.

18 THE ARBITRATOR: You have to
19 -- Dr. Bachar Hamad, look, you
20 have a very good lawyer, and
21 you're defeating his ability to
22 help you if you jump in with the
23 answer, because he can't say
24 "objection." I will have already
25 heard the answer.

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1 DIRECR-EXAMINATION OF DR. B. HAMAD
2 see that?

3 A. I see that.

4 Q. You don't have any recollection
5 of this?

6 A. Absolutely not.

7 Q. Do you know why Amar at the top
8 writes to you, "Dying"?

9 A. What?

10 Q. Do you see right here?

11 THE ARBITRATOR: The word
12 "dying," he's asking about at the
13 top.

14 THE WITNESS: Yes. No, I
15 don't know.

16 Q. Okay. Do you recall getting
17 this e-mail he sent this to you on
18 11/5/16?

19 MR. LEWIS: Objection.

20 A. I do not.

21 THE ARBITRATOR: What's -- I
22 don't know that there's a
23 question, so.

24 MR. LEWIS: There was. Do
25 you recall seeing this e-mail,

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2 So let him do his work, and
3 you've got to pause at the end of
4 a question. All right?

5 THE WITNESS: All right.

6 ARBITRATOR FARBER: Go
7 ahead, sir.

8 MR. LEWIS: Mr. Farber, this
9 will not be an issue, I believe
10 Mr. Brown is going to move on,
11 but Dr. Amar Hamad was cross
12 examined for at least three hours
13 today, and that would have been
14 the person to show this exhibit
15 to.

16 Dr. Bachar Hamad has
17 testified several times that he's
18 not familiar with this document.

19 THE ARBITRATOR: Well, let's
20 see what the question is. Go
21 ahead.

22 MR. BROWN: I'm pulling up
23 another exhibit. It's -- just
24 bear with me.

25 THE ARBITRATOR: Mr. Lewis,

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you forced him to another exhibit. You were very persuasive. Okay. Let's move on, guys.

MR. BROWN: It's Exhibit 549 in the joint book.

Q. And this is a letter to your attorney, David Hochman, right, was that Sarah's counsel?

A. Yes.

Q. And in it Simon writes to Mr. Hochman, right, "I'm writing in response to your recent e-mail correspondence to Mark Doll regarding your client's desire to terminate the letter agreement by and between landlord and tenant dated October 23, 2014"; do you see that?

A. Yes.

Q. Why were you trying to withdraw or terminate that letter agreement from January of 2015?

A. Why I was trying to cancel the letter, you mean?

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And there's no objection, so what's the answer?

A. You mean because we are good people that we get this letter?

Q. No.

A. Is that what you -- is that what you trying to say.

THE ARBITRATOR: Counsel, let's return this to the professional level we were working on and let's rephrase another question. All right.

Q. Isn't it true, sir, that you asked this for this letter agreement to be withdrawn because you had breached the license agreement with Forall in so signing it, and you needed to withdraw it because you were advised by Forall that that was a breach, and you could not continue with surrendering the lease without their -- at least, their approval?

A. That's not true.

Q. Okay. Do you see here where it

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Q. Yes.

A. This is because at that time Forall start to show some interest in taking over the store, and we want to give them the opportunity to perform one more time. We talk about this before, I think.

Q. So was it out of the kindness of your heart that you wanted to give Forall this opportunity?

A. Yes. You can say --

MR. LEWIS: Objection.

THE ARBITRATOR: Hang on. Did I hear an objection, Mr. Lewis?

MR. LEWIS: It's not worth repeating.

THE ARBITRATOR: Go ahead. Then the question stands.

MR. BROWN: Did you hear the answer, sir?

THE ARBITRATOR: I did not. The question was: Was this out of the kindness of your heart?

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says, "As you know, it was tenant that approached landlord and explained its desire to permanently close for business, surrender the premises to landlord, and terminate the lease"; do you see that?

A. Yes, I see.

Q. And isn't that statement true?

A. Yes, it is.

Q. And -- and that had occurred back in October 2014 without notice to Forall, correct?

A. With notice to Forall.

Q. You noticed --

A. Yes.

Q. -- Forall --

A. They know --

THE ARBITRATOR: Hold on. We will not continue this way.

Dr. Bachar, this is the third time I said you must let the questioner complete his question, and then you have to give your own lawyer, Mr. Lewis,

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an opportunity to say the word
"objection." So we're -- that's
the only way we're going to
operate.

Now, restate your question
please, Mr. Brown.

Q. Is it your testimony, sir, that
you notified Forall in October 2014
prior to executing the letter agreement
with Simon to find a replacement tenant
that you were proceeding with that
letter agreement?

A. Can you say it again, please?

MR. BROWN: Maggie, can you
read it back, please?

(Whereupon, a recess was
taken at this time.)

THE ARBITRATOR: Mr. Brown,
I would appreciate it if you
restated the question. It's a
little muddled at the end, so why
don't you restate it. All right?

Q. Prior to executing and
delivering the October 2014 letter

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agreement with Simon, did you advise
Forall that you were entering into that
letter agreement and seeking to
surrender the lease?

A. Yes.

Q. How did you do that, in writing?

A. Alfonso was aware. Luca was
aware of it.

THE ARBITRATOR: The
question was very specific. The
question was: How did you do
that? Not whether they were
aware of it.

A. They are the one who asked me to
do this, because they want to continue

--

THE ARBITRATOR: Dr. Hamad

--

A. There's no --

THE ARBITRATOR: All you
have to do is answer the
question. The question is: How
did you notify them? That's the
question.

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THE WITNESS: You want me to
answer?

THE ARBITRATOR: Please do.

THE WITNESS: Yes. We
talked to them and they know
about everything at that time.

THE ARBITRATOR: You did it
orally then, right?

THE WITNESS: Orally.

THE ARBITRATOR: Okay. Mr.
Brown, go ahead.

Q. And did you provide them with a
copy of the letter agreement at that
time, October 2014, and said, "Here's a
copy. I just sent it to Simon. You
should be aware of it?"

A. I cannot recall.

Q. You did not, did you?

A. I did not recall.

Q. And isn't it true that as soon
as Forall learned of the letter
agreement having been executed months
later, it demanded it be withdrawn as
it was a breach of the license

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agreement?

A. That's not true.

Q. Okay. But your actions were
that you did try to and ultimately were
successful in withdrawing the letter
agreement, were you not?

A. Yes.

Q. And are you aware that Sarah had
provided a collateral assignment of the
lease at issue to Forall at the
execution of the license agreement in
the beginning of the party's
relationship?

A. You want me to answer?

THE ARBITRATOR: Sure.

A. The answer is: Sarah has no
obligation towards Forall, whatsoever,
after we entered the first agreement.

THE ARBITRATOR: He didn't
ask you that. He asked you at
the time of the license
agreement, were you aware of the
fact that a collateral assignment
of lease was provided, that was

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the question.

THE WITNESS: Yes.

Q. Do you have an understanding
that the collateral assignment of lease
would prevent a party from surrendering
a lease without approval and notice to
the other secured party?

A. No, not necessarily.

Q. Okay. Under what circumstances
would that not be the case?

A. The lease was for me, not for
Forall. The lease was given to Sarah
LLC not to Forall, and we are the only
one that can execute the question.

THE ARBITRATOR: That's not
the question. The question was:

Are you aware of a situation
where a lease could be assigned
even though you had -- to another
party, even though you had
already provided this collateral
assignment of lease to Forall?

That was the question.

Am I right, Mr. Brown?

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MR. BROWN: Yes, you are,
sir.

THE WITNESS: Yes.

THE ARBITRATOR: Dr. Hamad,
we have to see your face. Go
ahead.

A. Yes, I was aware.

Q. Okay. So after Simon initially
objected to the withdrawal of the
letter agreement, right, they
ultimately conceded on that point and
did terminate the letter agreement from
October 2014, correct?

A. Correct.

Q. And despite the testimony from
you and your brother about how Simon
was -- had -- had had enough and was
trying to force you out and was
otherwise pressuring you to surrender
the lease, they went ahead and withdrew
that letter agreement, did they not?

A. They did.

MR. BROWN: I'm sorry?

THE ARBITRATOR: Go ahead.

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Q. Okay. Okay. Exhibit 176. I'm
going to pull up on the -- Claimant's
11416. Let me make sure it's the same
thing. Sorry.

THE ARBITRATOR: Dr. Hamad,
I had asked at the beginning of
the examination if you were alone
in the room --

THE WITNESS: I had asked my
nephew for help on the computer.

THE ARBITRATOR: I
understand. That's fine.

THE WITNESS: No. I had to
ask him --

THE ARBITRATOR: That's
fine. You identified who it was,
so that's okay.

Go ahead. Mr. Brown go
ahead.

Q. Yes. Okay. So this is
Exhibit 176. I'm going to put it up
the screen. Doctor, this is the letter
dated January 28, 2015, and you're one
signatory to that, correct, is that

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your signature on the bottom right?

A. Yes.

Q. And this is an agreement by
which it states "Effective immediately,
the landlord and tenant mutually agree
to withdraw, rescind, and otherwise
terminate the letter agreement of
October 23, 2014," correct?

A. Correct.

Q. And it says, "Landlord and
tenant acknowledge and agree that the
lease agreement dated May 18, 2011 and
any amendments thereto, if any, the
lease, defined, shall remain in full
force and effect, and tenant shall
remain open for business and continue
to operate and pay rent and any and all
applicable charges due on the lease";
do you see that?

A. Yes.

Q. And what is -- why did you
execute and make sure that this
agreement was put in place with the
Forum shops?

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2 A. Because at that time they found
3 a tenant to take over the store, and
4 this is why Luca -- I think that was
5 Luca when he came in with Alfonso to
6 give him the store.

7 Q. Wasn't the reason you entered
8 into this agreement was because you had
9 on-going obligations under the license
10 agreement to run the store?

11 A. No. I'm sorry.

12 THE ARBITRATOR: Could you
13 just scroll up to the date of
14 this document?

15 MR. BROWN: It's January 28,
16 2015.

17 THE ARBITRATOR: Okay. Now
18 I think you just testified, Dr.
19 Bachar Hamad, that you thought
20 that you entered into this in
21 order to facilitate Entebi taking
22 over the store; is that what I
23 heard?

24 THE WITNESS: Forall.
25 Forall. Sorry. Forall.

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2 lease at that point in time?

3 A. Yes.

4 MR. SHAH: Mr. Brown, could
5 you clarify that exhibit number?
6 I think you said 174.

7 MR. BROWN: 176.

8 MR. SHAH: Sorry. I've got
9 that as something else, too.

10 MR. BROWN: I'm sorry. 276.
11 Did I say "176"? It's 276.
12 Thank you, Sohil.

13 THE ARBITRATOR: Are we
14 ready Mr. Brown?

15 MR. BROWN: Yes. I'm just
16 looking at any time here and my
17 sincere hope to finish with the
18 witness today, but it may push
19 through 5:30.

20 THE ARBITRATOR:
21 Unfortunately, I'm charring a
22 meeting at 5:30 on another
23 matter, so I can't -- I can't go
24 beyond 5:25.

25 MR. BROWN: I'll see how

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2 THE ARBITRATOR: Okay.
3 That's what I thought. Okay. So
4 you did this to facilitate Forall
5 taking over the management of the
6 store, right?

7 THE WITNESS: Yes.

8 THE ARBITRATOR: All right.
9 Let's proceed.

10 Q. But you've acknowledged here
11 "Tenant shall remain open for business
12 and continue operating, pay rent, and
13 any and all applicable charges," right?

14 A. Yes.

15 Q. You were making this commitment,
16 once again, to Forum shops, but you
17 testified, did you not, when you first
18 started testimony today, that if you
19 we're ever back at the store, Sarah was
20 never running the store after September
21 '13; is that true?

22 A. Absolutely. That's true.

23 Except the lease. We are on the lease
24 only. That's for the lease.

25 Q. You were just operating the

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2 good I can do. And Arbitrator
3 Farber, you know, I do think I
4 need to step through with this
5 witness with these various --
6 some of the various agreements
7 and provisions. I think it's
8 important given his position in
9 the company.

10 THE ARBITRATOR: I don't
11 need any convincing. You have a
12 right to examine him. So you're
13 going to have that right, and
14 he'll have to appear tomorrow.

15 MR. LEWIS: Mr. Farber, if I
16 may be heard very briefly on
17 that. You admonished me about
18 duplicative testimony, and just
19 having a witness read, or having
20 it read to him the language that
21 we've heard ad nauseam, I'm not
22 sure about the utility of that,
23 especially given the time
24 constraints we're under.

25 THE ARBITRATOR: Well, I

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 don't know what the questions
 are.

And Mr. Brown, I'm confident
 you're mindful of the same
 admonition I gave to Mr. Lewis.
 There's no point in duplicating
 something if it's been asked of
 another witness. But until I
 hear the question, I don't know
 if it's duplicative or not. So
 why don't you proceed right now,
 and we're simply going to do the
 best we can. I know both of you
 have worked very hard today. Go
 ahead.

MR. BROWN: Thank you, sir.
 All right.

Q. I'm going to go to the asset
 purchase agreement between Sarah and
 Italnord. Exhibit 6.

Dr. Bachar, are you familiar
 with this document?

A. Yes.

Q. Is that your signature as

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 president?

A. Yes.

Q. Did you sign that?

A. Yes.

Q. And under Section 1.4, which is
 on Page 3, it discusses lease deposit
 and Forall payment. Section B says,
 "Pay to, seller, \$38,000, which is due
 from Forall to seller, the Forall
 payment. Purchaser shall seek
 reimbursement of the Forall payment
 from Forall"; do you see that?

A. Yes, I do.

Q. Did Sarah or anyone on behalf of
 Sarah receive this \$38,000 payment from
 Italnord?

A. Not to my knowledge, no.

Q. Have you checked your records
 and looked for copies of checks or
 deposits --

A. Yes.

Q. -- indicating the \$38,000 was
 made?

A. Was not made.

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 Q. And is it your testimony that
 Italnord, despite not making this store
 -- this payment, took over management
 of the store?

A. What was your question at the
 end?

THE ARBITRATOR: Is it your
 testimony that without -- even
 though they didn't make the
 payment, that Entebi and Italnord
 still took over the store?

THE WITNESS: Yes.

Q. Did you ever seek enforcement of
 this provision by legal means or
 otherwise against Italnord?

A. I think my brother was handling
 this issue. I cannot recall.

THE ARBITRATOR: Counsel,
 let me say that this really does
 sound like almost an exact
 duplication. I heard from the
 other Dr. Hamad that there was no
 legal action, so I don't know why
 we're doing it again with this

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 witness.

MR. BROWN: I'm just -- to
 the extent that Mr. Amar had no
 position within the company, I've
 dotted those Is and crossing
 those Ts. It is unfortunate that
 he was their first witness, but I
 think it is incumbent upon me to
 touch upon this. He is the
 signatore to this agreement.

THE ARBITRATOR: I didn't
 stop you from that one. Go
 ahead.

Q. Dr. Hamad, do you see this
 language here that's in Section 1.7
 that says, "Notwithstanding anything in
 this agreement to the contrary,
 purchaser is not assuming the lease or
 the license agreement in full. It is
 only assuming seller's performance and
 payment of obligations during the term
 as defined in Section 4.4 of this
 agreement under the lease, license
 agreement, and other operation

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2 contracts listed on Schedule 1.1,
3 little C, Roman numeral four"; do you
4 see that?

5 A. Yes.

6 Q. Do you have an understanding of
7 this provision?

8 A. Yes, I do. It means that was
9 inserted in the second draft again,
10 that was not in the first draft, just
11 for Simon in case he check on the
12 lease.

13 Q. Why is it referenced the license
14 agreement?

15 A. Because -- what do you mean by
16 "license agreement," exactly, because
17 if Simon find out that they are
18 operating the store, not us, he would
19 kick them in the same day [sic].

20 Q. Simon, why would they care about
21 the license agreement; were they a
22 party to that?

23 A. Well, Simon has authorized us to
24 operate the store. He doesn't care
25 about anything except us operating the

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2 Q. You see this Section 3.2,
3 "Representation," I'm sorry. Section
4 3.1, "Representations and warranties of
5 seller," the Section A, "The execution,
6 delivery, and performance of this
7 agreement including any exhibit hereto
8 by seller does not and will not
9 immediately or with the passage of
10 time, the giving of notice or
11 otherwise, one, result in any material
12 breach of or conflict with any terms,
13 conditions, provisions, of any
14 agreement, and venture, mortgage,
15 lease, or other instruments, to which
16 seller is a party or by which seller is
17 bound or gives rise to any right of
18 termination by any party"; do you see
19 that?

20 A. Yes, I do.

21 Q. Wasn't this a representation by
22 Sarah to Italnord in the making of this
23 agreement that Sarah was not going to
24 be breaching any agreements that it was
25 party to by executing this doc?

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2 store.

3 The biggest fear for Forall and
4 Alfonso and Forall, again, if Simon
5 find out they are directing the store
6 or operating store they will -- they
7 will tell them to -- ask them to leave.

8 Q. So this -- you said something
9 about a draft, but isn't this the final
10 agreement that you signed?

11 A. Yes, we did. We were asking
12 about this -- this a lot of times. He
13 said, "Don't worry. It's not
14 enforceable."

15 Q. Do you have -- believe contracts
16 that you signed are not enforceable?

17 A. I believe people for their word.

18 Q. Did you think the lease was not
19 enforceable?

20 A. Again, the lease is the only
21 thing we were on the hook for. Simon
22 -- Alfonso and Forall cannot have the
23 lease under their name. They were
24 forcing us to keep the lease under our
25 name so they can operate the store.

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2 A. Sir, I never breach any
3 agreement with Alfonso Entebi.

4 Q. I'm sorry. I didn't understand
5 the answer.

6 A. I said -- you asked me if I
7 breached an agreement with Entebi. I
8 was not.

9 Q. My question is: This is a
10 representation you've made to the
11 purchaser in this agreement? You're
12 saying, "Look, by signing this
13 document, I'm not breaching any other
14 agreements that I'm party to." "You,"
15 being Sarah. Do you have an
16 understanding about that?

17 A. Yes, I do.

18 Q. Okay. And didn't you have an
19 obligation under the license agreement
20 to remain responsible for operating the
21 store, keeping the lease in good order,
22 making minimum purchases under the
23 lease license agreement?

24 A. Well, we had obligation to keep
25 the store, the lease for the store. We

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 did not have any obligation when we
 enter this, you know, contract with
 Alfonso and Forall. We did not have
 any obligation to operate the store or
 anything.

Q. Okay. So for the term of the
 agreement with Alfonso, he was going to
 manage the store, correct?

A. He took over the store.

Q. And he was going to manage it
 for you, for Sarah, during that time,
 right?

A. That's not true. He took
 100 percent responsibility for the
 store for himself. Not for us. I'm
 sorry.

Q. Do you dispute the fact that
 there was a term for Alfonso's
 management of the store, that it was
 for a set period of time, your brother
 referred to it as a "trial"?

A. As what?

Q. As a "trial."

A. Actually, it was a -- a way for

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 me at all, I was saying this
 is --

THE ARBITRATOR: No good,
 Mr. Lewis.

MR. LEWIS: I'm going to
 jump off and come back right in.

(Whereupon, a recess was
 taken.)

THE ARBITRATOR: Now, Mr.
 Lewis what were you going to say?

MR. LEWIS: Just to explain
 my objection. This is
 cumulative, duplicative, it's
 asked and answered. I think
 Mr. Brown doesn't like the fact
 that Dr. Hamad will not give in
 that it was a management, as
 opposed to him taking over the
 store, no matter how many times
 he asked that. I don't know if
 that's going to change. But it's
 duplicative at this point in
 time.

THE ARBITRATOR: Well, in

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 him to build the credit so he can go
 and ask for the lease to be transferred
 in his name.

Q. Your attorney asked you if you
 knew what was in the management
 agreement and asset purchase agreement
 and the documents that you've signed,
 right?

A. Yes, I do.

Q. And you know that there is a
 term for a period of time that Italnord
 was going to manage your store; isn't
 that right?

MR. LEWIS: Objection.

THE ARBITRATOR: What's the
 objection? I'm sorry, Mr. Lewis,
 it's acting up again. Guys,
 we're really having a lot of
 technical glitches today. I
 don't know why. Mr. Lewis, try
 it again.

MR. LEWIS: Any better?

THE ARBITRATOR: Same thing.

MR. LEWIS: If you can hear

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 light of the fact that he's in
 one on behalf of Sarah who
 actually signed the agreement
 with Italnord, I think it's fair
 game for Mr. Brown.

So, Mr. Brown, you can
 continue. Overruled.

(Whereupon, a portion of the
 record was read back.)

A. The term was again and again for
 Alfonso to build the credit so he can
 apply and take the lease under his name
 from Simon.

THE ARBITRATOR: The
 question was: Did you know there
 was a term, yes or no?

THE WITNESS: Yes, I do.

THE ARBITRATOR: Okay.
 That's the answer. Next
 question.

Q. Did this notion of Italnord
 building his credit, is that anywhere
 in any of the documents that were
 signed between Sarah and Italnord?

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 A. It's in the language between
3 Luca --

4 THE ARBITRATOR: He didn't
5 ask you about language between
6 Luca.

7 THE WITNESS: No.

8 THE ARBITRATOR: That is the
9 answer. Next question.

10 Q. Is that language anywhere in the
11 consent and stipulation that Forall
12 signed authorizing the management
13 agreement with Sarah?

14 THE ARBITRATOR: With
15 Italnord and Sarah, right?

16 MR. BROWN: Yes.

17 A. No.

18 THE ARBITRATOR: Counselor,
19 how much more do you have of the
20 witness?

21 MR. BROWN: Likely a half an
22 hour, Mr. Farber.

23 THE ARBITRATOR: Look guys,
24 I told you I've got another
25 meeting I'm charring at 5:30, so

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1 DIRECR-EXAMINATION OF DR. B. HAMAD

2 I do want to have just a moment
3 to take a break.

4 So are we at a good
5 convenient point, Mr. Brown?

6 MR. BROWN: We are.

7 THE ARBITRATOR: Tomorrow
8 morning 9:00 everyone.

9 Mr. Lewis, do you have
10 another witness after this
11 witness?

12 MR. BROWN: Only our
13 rebuttal expert.

14 THE ARBITRATOR: Okay. So
15 that would come in rebuttal.

16 Mr. Brown, who is going to
17 be your first witness as soon as
18 we're done with Dr. Bachar Hamad?

19 MR. BROWN: Paolo
20 Torello-Viera, and followed by
21 Palma Settimi.

22 THE ARBITRATOR: All right.
23 Tomorrow 9:30 everyone. We'll
24 see you then.

25 (Time noted: 5:20 p.m.)

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1 C E R T I F I C A T E

2 I, MAGDALENA M. ARTILES, a shorthand
3 reporter and Notary Public within and
4 for the State of New York, do hereby
5 certify:
6

7 That the Witness(es) whose testimony
8 is hereinbefore set forth was duly sworn
9 by me, and the foregoing transcript is a
10 true record of the testimony given by
11 such Witness(es).

12 I further certify that I am not
13 related to any of the parties to this
14 action by blood or marriage, and that I
15 am in no way interested in the outcome
16 of this matter.
17



18 *Magdalena M. Artiles*
19
20
21
22
23

24 Magdalena M. Artiles, a Court
25 Reporter and Notary Public
Date: November 12th, 2020

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AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration of

SARAH LLC, HALA SUBH, SUHAD ALBASHA,

BACHAR HAMAD AND AMAR HAMAD,

CLAIMANT,

-and-

Case No.:

01-18-0000-6180

FORALL USA, INC.,

RESPONDENT.

-----X

DATE: October 28, 2020

TIME: 9:36 a.m.

ARBITRATION in the above
entitled matter, held Via Zoom,
transcribed by Magdalena M. Artiles, a
Notary Public of the State of New York,
held before Eugene I. Farber,
Arbitrator.

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Palma Settimi

Sana'a Hussein

Chad Salsbery

* * *

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CROSS-EXAMINATION OF DR. B. HAMAD

THE ARBITRATOR: Good morning. Nice to see everyone.

Dr. Hamad, be reminded that you're still under oath.

Maggie, will you read the last question and answer.

(Whereupon, a portion of the record was read back.)

MR. BROWN: Just, I would note for the record that Paolo Torello-Viera is with us again today.

THE ARBITRATOR: Good morning. Okay.

B A C H A R H A M A D, resumed and testified as follows:

CROSS-EXAMINATION

BY MR. BROWN:

Q. Good morning, Dr. Hamad. How are you this morning?

A. Good. How are you?

Q. Just fine. Thank you. I want to go back to a document that your counsel had put up on the screen and

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CROSS-EXAMINATION OF DR. B. HAMAD
 you testified about. I'm going to do that right now.

MR. BROWN: It's 21, everyone.

Q. Doctor, can you see my screen?

A. Yes.

Q. Okay and this was an e-mail from Luca Spano sent on January 17, 2013; do you see that?

A. Yes.

Q. Okay. Now, you indicated that Forall never gave you any discounts pursuant to this e-mail; is that right?

A. Yeah. I think so. They did not.

Q. But you also testified that you not -- actually, Sarah did not buy anything in 2013?

A. We bought for the first season in 2013.

Q. And -- but is it your position that the -- there was no purchases that should have been credited in 2013?

A. We testified that the second

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 purchase was not done, only the first
3 one. And that was the end of 2012 for
4 '13.

5 Q. Okay. But your point, and you
6 disputed Mr. Spano's allocation on his
7 spreadsheet that had purchases in 2013,
8 right?

9 A. The purchase for 2013, the first
10 season happened at the end of 2012.
11 The one you talking about was for the
12 fall 20 --

13 THE ARBITRATOR: Dr. Hamad,
14 let's go back now. Just answer
15 the question. We want to finish
16 your testimony as soon as
17 possible.

18 Go ahead.

19 Q. The question is: You disputed
20 in your prior testimony that there
21 should be no purchases made by Sarah in
22 2013, right?

23 A. No. I didn't say this.

24 Q. Okay. So now you're saying that
25 there were purchases made in 2013?

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 according to you there was no purchases
3 made?

4 A. Well, the conformation was
5 before the end of '12, before we bought
6 for the first season of '13. That came
7 later on.

8 Q. Oh. So your testimony is that
9 the discounts should have been applied
10 prior to this e-mail; is that right?

11 A. I'm -- yes or no? The answer is
12 yes.

13 Q. Okay. Do you see the language
14 of this e-mail, "Dr. Hamad, this is to
15 confirm and make official that as per
16 company approval, the following
17 discounts will be given to Sarah LLC
18 going forward"; do you see that?

19 A. I see.

20 Q. Do you understand that language,
21 sir?

22 A. I do.

23 Q. You -- do you have an
24 understanding of the language "Will be
25 given going forward." Does that -- so

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1 CROSS-EXAMINATION OF DR. B. HAMAD

2 A. I'm not saying -- I'm saying
3 what I said before.

4 THE ARBITRATOR: Hold on.

5 That's a "yes" or "no."

6 Counselor, as I understand
7 it, the witness's testimony is
8 that the actual placement of it
9 was the end of 2012 for '13, but
10 the second collection in '13 was
11 not purchased by Sarah. Is that
12 correct, Dr. Hamad?

13 THE WITNESS: That's
14 correct.

15 THE ARBITRATOR: Let's go to
16 the next question.

17 Q. So you -- according to your
18 testimony, after this e-mail by Mr.
19 Spano, there were no purchases made by
20 Sarah; isn't that right?

21 A. That's right.

22 Q. So why would you expect a credit
23 to have been given to you or discount
24 given to you -- I'm sorry -- discount
25 on purchases after this date if

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 that, to you, tell you that it's
3 something in the past or in the future?

4 A. Should I say yes or no or should
5 I explain how I understand it?

6 THE ARBITRATOR: He asked if
7 it's past or future, and you can
8 say "past" or "future" or you
9 can't answer the question.

10 A. That's for '13, yes.

11 Q. For the future, right?

12 A. No. That's for '13. It says on
13 the first line "For '13."

14 Q. '13 wasn't my question. I said,
15 "past," "future," or you don't know.
16 That should be your answer per Mr.
17 Farber's instructions.

18 THE ARBITRATOR: Why don't
19 you --

20 A. Past.

21 THE ARBITRATOR: Okay. We
22 got the answer. Go ahead.

23 Q. Isn't it true that at this same
24 time Forall applied a \$60,000 credit to
25 Sarah in its account?

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CROSS-EXAMINATION OF DR. B. HAMAD

A. For what?

THE ARBITRATOR: Do you know if a \$60,000 credit was applied around this time?

THE WITNESS: I don't know.

THE ARBITRATOR: That's a "no," you don't know?

THE WITNESS: I don't know.

Q. Who would know that?

A. The accountant.

Q. And what's their name?

A. Kim Sampson.

Q. Kim Sampson?

A. Yes.

Q. Would Palma Settimi also have that information?

A. I don't know.

Q. Do you see here where Mr. Spano says, "SS2015 season." Do you know what "SS" means? What does that refer to?

A. No.

Q. "S slash S," do you know what that -- what he's referring to there?

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CROSS-EXAMINATION OF DR. B. HAMAD

A. No.

Q. Did you write back to Mr. Spano and say, "I don't know what you're talking about"?

A. No.

Q. Okay. So I'll represent that "S slash S," within your correspondence between Forall and Sarah and many points of time is referring to spring, summer, okay? Does that make sense to you?

A. That would make sense, yes.

Q. Okay. "From the spring, summer 2015 season and followings: No more discounts will be granted. Thus, we will return to the regular contractual terms that should have started, according to the signed contract, since the S slash W 2013, '14 season"; do you see that?

A. Yes.

Q. Do you know what "F slash W" means?

A. Fall, winter.

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CROSS-EXAMINATION OF DR. B. HAMAD

Q. So isn't Mr. Spano indicating to you that they're going to work with you by giving you additional discounts on products, but that's going to come to a close on a certain date, namely spring, summer 2015?

A. Yes.

Q. Does anywhere in this e-mail, does Mr. Spano say to you that the \$900,000 minimum purchase requirement is waived or modified?

A. He repeated multiple times.

THE ARBITRATOR: He didn't ask you that.

A. No.

THE ARBITRATOR: That's all.

You have the answer. Go ahead.

Q. And nowhere in writing at any time did anybody from Forall tell you that in that -- that the minimum purchase requirement was waived or otherwise modified, did they?

THE ARBITRATOR: Counselor

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CROSS-EXAMINATION OF DR. B. HAMAD

--

A. No.

THE ARBITRATOR: Let me just say, it's better to ask the question in the affirmative because, "Nobody at any time," he says, "No," that actually means yes.

MR. BROWN: Thank you, Mr. Farber.

THE ARBITRATOR: You may want to patch it up. It's up to you.

Q. Did anyone at Forall ever put in writing to you that the minimum purchase requirement under the license agreement was waived or otherwise modified?

A. No.

Q. And do you see here he says, "A new shipment has been sent two days ago containing spring S slash S 2013." Spring, summer 2013; do you see that?

A. Yes.

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CROSS-EXAMINATION OF DR. B. HAMAD

Q. Do you recall the -- when Forall would invoice Sarah for products when that invoicing occurred?

A. No.

Q. Isn't it true that it occurred upon shipping the invoicing would issue from the accounting department [sic]?

A. I don't know.

Q. Okay. Just to be clear, the sum and substance of this e-mail is that Forall was agreeing to additional discounts to assist Sarah in its profitability, but it was anticipated by the very terms here that that would slowly wind down and the parties would get back to the agreement terms as it relates to the discounts, right?

A. It could be.

Q. But in no time did they waive the minimum purchase requirement, right?

MR. LEWIS: Objection.

THE ARBITRATOR: What's the objection?

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CROSS-EXAMINATION OF DR. B. HAMAD

THE ARBITRATOR: Hang on.

Dr. Hamad, once again --

THE WITNESS: Okay.

THE ARBITRATOR: If you're going to jump in with an answer, then you're not letting your own lawyer help you. So you have to give him an opportunity to say the word "objection". Next question.

MR. BROWN: I did the negative question there again and it's confusing, so I just want to restate that question.

THE ARBITRATOR: All right.

Q. The waiver that you're referring to, or you believe that occurred, that was not in writing was --

MR. LEWIS: Objection.

THE ARBITRATOR: What's the objection?

MR. LEWIS: If you're asking him from a legal standpoint, I object to it.

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CROSS-EXAMINATION OF DR. B. HAMAD

MR. LEWIS: That calls for a legal conclusion. That's what were determining here in this arbitration.

THE ARBITRATOR: Okay. I'll take the witness's answer not as a legal conclusion, but what his lay understanding was.

You can answer the question.

THE WITNESS: Yes or no or explain?

THE ARBITRATOR: The question is: Up to now, did they, at any time, waive the \$900,000 minimum purchase requirement?

THE WITNESS: Yes.

THE ARBITRATOR: Okay.

That's your answer. Go ahead, next question.

Q. And that waiver -- but that waiver was never in writing, was it?

MR. LEWIS: Objection.

A. Yes.

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CROSS-EXAMINATION OF DR. B. HAMAD

THE ARBITRATOR: Same

ruling. Overruled.

You can answer.

A. No.

Q. Isn't it true that Forall wanted efficient inventory to be in the store so that --

THE ARBITRATOR: Before you get to that question, let me just follow up on the last one, Mr. Brown.

Look, Dr. Hamad, I've seen all these contract documents and, you know, it seems to me that you and Forall had your lawyers and, you know, and you were pretty careful with a lot of the deals, including the Italnord deal, and later on when Forall, itself, began the management arrangement. You always did formal legal agreements.

So my question to you is: Why wasn't the waiver, as you

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understood it, the waiver of the \$900,000 minimum purchase requirement, why didn't you try to have that put in writing as well?

Did you hear my question, Dr. Hamad?

THE WITNESS: Yes, I did.

THE ARBITRATOR: Okay. And I can't see your face.

MR. BROWN: He's not reading anything in that regard, is he?

THE ARBITRATOR: Did you hear my question, Dr. Hamad?

THE WITNESS: Yes, I did.

THE ARBITRATOR: Okay. What's your response.

THE WITNESS: You're asking why did it not put the 900 in the

--

THE ARBITRATOR: The waiver, you said you understood there was a waiver of the 900, that it was not in writing, and I'm asking

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CROSS-EXAMINATION OF DR. B. HAMAD

you, given that I see other writings for other things, why wasn't this put in writing?

THE WITNESS: Because we're -- from the beginning was -- the deal was just to keep the lease under our name [sic]. The whole idea behind this was for the lease to be legal and they can operate under my lease.

The 900 issue never come to the surface the whole five years.

THE ARBITRATOR: I just don't understand the response. The contract, as you saw, the original license agreement clearly has a statement about the minimum purchase requirement of \$900,000 and, you know, it has -- has the length of the -- of the term and all kinds of other terms. And my question is -- maybe I'm just not grasping what you're saying.

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If there was a change and that was waived, that \$900,000, and you testified about the meeting in -- I think it was November of '13. The meeting in Venice. You know, I heard about it and you were there, your bother was there.

My question simply is: Why was that not put in some writing? If not a formal contract, an e-mail, something like that.

THE WITNESS: The answer is: This purchasing agreement number was never talked about. They told me -- I asked Luca and I asked all the company at that time, why this is the license agreement back then. He said, "If Simon would take a look at that contract, he will think that this is Sarah operating the store again under Sarah's name." Because if they put their name or

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they change the contract, there will be change and he might evict him from the store. That's why.

We did not pay attention to -- we did not bring it to the surface because for them was not an issue. They said, "Well this is the way the original contract [sic]. Leave it the way it is, so Simon will not find out we are trying to take over the store." That's the answer.

THE ARBITRATOR: Okay. All right. Thank you.

Go ahead, Mr. Brown.

MR. LEWIS: Mr. Farber, if I may, before Mr. Brown continues, I think Dr. Hamad thinks you're asking about the period with Italnord, not the period in November 2012 when they came back.

THE ARBITRATOR: You can patch it up when you do your

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examination if you think that,
you know, he was confused.

Go ahead, Mr. Brown.

Q. Doctor, isn't one of the
purposes that there was a minimum
purchase agreement agreed to in the
license agreement and required was so
that the store would have sufficient
inventory at all times to sell product
and make money?

A. No.

Q. And isn't it true that in the
high-end luxury line that it's
imperative to have sufficient product
and new looks in the store at all times
so that customers buy product?

A. Yes.

Q. And isn't it true that Pal
Zileri operated in the luxury fashion
space?

A. Yes.

Q. And the spring, summer, fall
winter lines, those would be constantly
updated every year, would they not?

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CROSS-EXAMINATION OF DR. B. HAMAD
outdated. The fashion is not there
anymore. They different style [sic].

Q. It's your testimony that Forall
didn't get you product in time for the
selling seasons?

A. Yes.

Q. When was that?

A. First season and third season.

Q. So first season being the
September 2011 season?

A. Yes.

Q. When did you get that product,
that line?

A. I think end of September. If
I'm not mistaken, end of September,
beginning of October. It was continued
shipment.

Q. Isn't it true that in the
industry, the shipment occurs during a
period of time, generally speaking, a
couple of months so there's an influx
of products as the selling season keeps
up?

A. Yes.

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A. Not necessarily. But there
would be new lines issued every year,
correct. Generally, yes.

Q. So there would be some staples
such as suits that may carry over from
season to season, but there were other
new line products that were generated
spring, summer, fall, winter, every
year?

A. Correct.

Q. So that by offering the discount
to assist with the store that Sarah was
operating, Forall was not agreeing to
have less inventory in the store,
correct?

A. That's not correct.

Q. What was incorrect about that?

A. Because it depends if they have
the inventory to ship or not. Some --
you know, sometimes they do not have
the items and/or the items come late
instead of coming for the winter, will
come in the spring for the following
season, will be too late, and you

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Q. Is it your testimony that you
didn't have all of the -- all of the
product for the fall, winter at the
beginning of September?

A. Yes.

Q. And that --

A. We did not. Yes.

Q. So you considered that a -- a
failing on the part of Forall.

A. Yes.

THE ARBITRATOR: Wait until
he finishes the question.

A. Okay.

Q. You considered that a failing on
the part of Forall, not industry
practice?

A. Fail on Forall, yes.

Q. Bear with me. I'm just going to
another document.

Dr. Bachar, at any time prior to
August 1st when Forall was served with
a notice of eviction by Simon's
counsel, August 1, 2016, did Sarah
advise Forall that it had surrendered

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 the lease and was stipulated to an
3 eviction proceeding?

4 A. I don't recall.

5 Q. Can you point to any documents
6 in your possession or your counsel's
7 possession that provided any notice to
8 Forall that you had canceled the lease
9 and stipulated and consented to an
10 eviction proceeding?

11 MR. LEWIS: Objection.

12 THE ARBITRATOR: What's the
13 objection?

14 MR. LEWIS: The
15 characterization of stipulating
16 to an eviction proceeding.

17 THE ARBITRATOR: What's
18 wrong with that? Someone can do
19 that.

20 MR. LEWIS: It's not
21 accurate. There's nothing in the
22 record that reflects that, unless
23 Mr. Brown has something or I can
24 deal with that on re-direct.

25 THE ARBITRATOR: Overruled.

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 eviction. You guys need to get out"?

3 A. I think the lawyer handled it,
4 and think he has some document.

5 Q. But you didn't pick up the phone
6 and call Paolo who had been running
7 this store now for you for well over a
8 year, in good faith, did you?

9 A. He was not running the store for
10 us. He was running the store for
11 himself. And we called him multiple
12 times. He hang up [sic]. He was not
13 answering the phone the whole six
14 months before that.

15 Q. It's your testimony that he
16 would hang up the phone on you --

17 A. Yes.

18 THE ARBITRATOR: Let him
19 finish the question, all right?

20 The testimony is that whenever he
21 called, Paolo he hung up the
22 phone in the few months
23 beforehand; is that right?

24 THE WITNESS: That's right.

25 Q. Did you ever call him to tell

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1 CROSS-EXAMINATION OF DR. B. HAMAD

2 If he knows of such a thing, he
3 can answer, or if he doesn't
4 know, he can say he doesn't know.

5 You can repeat the question,
6 Mr. Brown, or have it read back.

7 MR. BROWN: I would love for
8 it to be read back.

9 Maggie, can you handle that?

10 Thank you.

11 (Whereupon, a portion of the
12 record was read back.)

13 A. I don't recall.

14 Q. But can you point to any
15 documents? As you sit here today, do
16 you know if any exist?

17 A. I cannot remember.

18 Q. As you sit here today, you can't
19 point to any documents that provide
20 that kind of notice to Forall, can you?

21 A. It might be there, but I don't
22 know. I don't recall.

23 Q. Why didn't you tell Forall
24 that -- "Oh, by the way, we've canceled
25 the lease and we've consented to an

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 him, "We've surrendered the lease"?

3 A. Whenever we call him, he doesn't
4 answer. He hang up again. The same
5 answer.

6 Q. So your testimony is that you
7 did call him to advise him of that, but
8 he hung up on you?

9 A. Yes. For the last six months,
10 whenever we call him, he doesn't
11 answer.

12 Q. Did you ever send him an e-mail
13 saying, "We've canceled the lease"?

14 A. That was handled by the lawyer.

15 Q. Do you know if the management
16 agreement had any specific provisions
17 that precluded Sarah from cancelling
18 the license during the --

19 A. That was handled by the lawyer.

20 THE ARBITRATOR: He asked
21 you about your knowledge of
22 whether there was a provision in
23 this regard.

24 THE WITNESS: I don't
25 remember.

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1 CROSS-EXAMINATION OF DR. B. HAMAD

2 Q. You don't know?

3 A. I don't remember.

4 Q. Okay. But that's different than
5 "I don't remember." So you don't know,
6 as you sit here today, if the
7 management agreement had a provision
8 that specifically precluded the
9 surrendering or cancellation of lease
10 during the term of the management
11 agreement?

12 A. I don't remember if I read it or
13 not. I don't remember it.

14 Q. I'm going to show you the
15 statement of claim in this proceeding,
16 which was filed by Sarah.

17 And the exhibit should be right
18 up front and center, Exhibit 1, maybe.
19 Exhibit 101, Claimant's Demand for
20 Arbitration. Okay, sir? Can you see
21 my screen now?

22 A. Yes, I can.

23 Q. This allegation at paragraph six
24 says, "In or about 2013, Sarah LLC
25 became aware that prior to 2011, Forall

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1 CROSS-EXAMINATION OF DR. B. HAMAD

2 had previously franchised or licensed
3 the operation of Pal Zileri menswear
4 retail store in Las Vegas, Nevada, and
5 that such store had failed to operate
6 profitably and had been shut down and
7 closed by its operating
8 franchisee/licensee." Do you see that?

9 A. Yes, I do.

10 Q. And then this allegation states,
11 "These facts have been withheld and
12 concealed by Forall in its negotiations
13 with Sarah LLC in 2011 to open the Pal
14 Zileri store at the Forum Shops." Do
15 you see that?

16 A. Yes, I do.

17 Q. Is this paragraph true?

18 A. It is true.

19 Q. So your testimony today is that
20 you or Sarah only learned in 2013 that
21 there had been a prior Pal Zileri store
22 in Las Vegas prior to the Sarah store?

23 A. '13 or '12, I don't know, but
24 around that time, yes.

25 Q. Isn't it true that when you

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1 CROSS-EXAMINATION OF DR. B. HAMAD

2 approached Forall in 2010, one of your
3 business partners had worked at that
4 store for over 10 years and you were
5 intimately familiar with its
6 operations?

7 A. That's not true.

8 Q. Do you see Paragraph 13? It
9 states, "On or about August of 2016,
10 and despite having assumed full
11 responsibility for the Pal Zileri
12 store, business, and the Forum lease,
13 Forall had defaulted in its monthly
14 payment to rent to the landlord"; do
15 you see that?

16 A. Yes.

17 Q. "In consequence of Forall's
18 default and failure to pay monthly
19 rents under the Forum lease, the
20 landlord commenced eviction action and
21 terminated the Forum lease for the Pal
22 Zileri store then operated by Forall."
23 Do you see that?

24 A. Yes.

25 Q. Is that paragraph true?

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1 CROSS-EXAMINATION OF DR. B. HAMAD

2 A. True.

3 Q. And you read this before it was
4 -- it was filed with the Triple A on
5 your behalf?

6 A. By the lawyer, yes.

7 Q. Do you know if Simon sent Forall
8 rent money back after it evicted them
9 in August or September 2016?

10 A. Say it again. I'm sorry.

11 Q. Do you know whether Simon had to
12 return rent money to Forall after
13 Forall was evicted because they had
14 paid the August rent already?

15 A. I don't know that.

16 Q. Going back to the management
17 agreement, sir, and bear with me. See
18 Section 5.10 of the management
19 agreement between Forall and Sarah. It
20 says, "The management agreement shall
21 not alter or amend the party's rights
22 and obligations under the license and
23 retail operating agreement between
24 Sarah and Forall dated March 2011 and
25 Sarah's obligation under the lease.

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Except that Forall shall assume all lease payments during the term." Do you see that?

A. Yes.

Q. Didn't Forall make all rent payments during its management term?

A. Late most of the time.

Q. That's not my question. Did they make them? Were they paid?

A. Late, yes.

Q. Didn't the rent invoices continue to come from Simon to Sarah during the term that it was -- Forall was operating the store?

A. Yes.

Q. And Sarah or someone for Sarah would forward those invoices on to Forall for payment, right?

A. Yes.

Q. And there were delays in when Sarah would forward those to Forall, were there not?

A. No.

Q. You see Section 5.12?

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THE WITNESS: We did.

Q. So how was it true in your statement of claim that you've alleged Simon evicted Forall because of nonpayment of rent?

A. I don't know if you read the e-mail about the six-month or you forget completely about it, that was the purpose for the six-month to surrender the lease [sic].

Q. That answer wasn't at all responsive to my question.

A. That answers the question.

MR. BROWN: Maggie, can you read that back, please.

(Whereupon, a portion of the record was read back.)

A. We did surrender the lease without their inform [sic].

Q. But you alleged in your pleadings in this case that Simon evicted Forall for nonpayment of rent; is that true?

A. One of the reasons.

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A. Yeah.

Q. "The company shall not transfer or surrender the lease without Forall's prior written consent and agreement." Do you see that?

A. Yes.

Q. Didn't you, in fact, surrender the lease during the term of the management agreement without notice or consent to or from Forall?

A. We surrendered the lease because Simon didn't want Forall at all.

THE ARBITRATOR: He didn't ask the reason. He just asked whether or not that happened.

THE WITNESS: Let me read it again.

THE ARBITRATOR: The sentence is: "The company shall not transfer or surrender the lease without Forall's prior written consent and agreement," and he's asking if Sarah did that or not.

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Q. What other reason you alleged in your pleadings in this case --

A. Not performing very well.

THE ARBITRATOR: Hang on.

Q. What other reasons -- you said other reasons -- what other reasons did you allege in your pleading that Simon evicted Forall?

A. Very poor performance on their part in the store.

Q. That's alleged in your pleading?

A. That's a reason.

Q. Did you think it relevant for this case to provide the arbitrator with a full set of facts to disclose that you had surrendered and canceled the lease and stipulated to an eviction proceeding?

A. Can you repeat the question again.

MR. BROWN: Maggie, can you read it back.

(Whereupon, a portion of the record was read back.)

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A. From your part or my part?

THE ARBITRATOR: Well, from anyone's part. Did you think it was relevant to tell me that?

THE WITNESS: Yes.

THE ARBITRATOR: Okay.

Q. And you failed to do so, right?

A. I failed to do what?

Q. To make mention of that in your pleadings and representations to the Triple A?

A. I failed to do it.

THE ARBITRATOR: Next question, Mr. Brown.

MR. BROWN: Arbitrator Farber, I'd like to make another run at the business proposal plan, and I do that because it goes to the credibility of this witness. And the documents should have been produced, but was not in discovery by the claimants. It was subject to a specific request made by

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admit as an exhibit the business proposal plan which was produced on the eve of this proceeding. It was produced by Ms. Settini to me, I then forwarded it to Mr. Lewis and attempted to have that document admitted as --

THE ARBITRATOR: All right. Let's hear if Mr. Lewis objects or not.

MR. LEWIS: I certainly object, Mr. Farber. This is a document, if I understand what it is, that was sent to me, I believe, it was Sunday before trial. It may have been Saturday before the arbitration began.

We -- I don't know how this document -- how they -- how Mr. Brown can attest to the authenticity of the document. And if it was in Ms. Settini's possession, it should have been produced pursuant to

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respondent and bringing that up on my screen now.

And that was Request Number 9, "All documents relating to the claimant's due diligence and review of the business opportunity relating to the opening and operating of the Pal Zileri store in or around 2010, 2011," that's a very specific request.

The business proposal plan that was submitted should have been provided. I acknowledge the fact that this plan resided with

Ms. Settini; however, it was sent to Mr. Spano who was no longer with the company when this action was commenced, and I did not have the ability to review his e-mails.

THE ARBITRATOR: So I'm not sure what you're asking me.

MR. BROWN: I'm seeking to

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our discovery request, and that wasn't produced by Forall either.

And again, just to share the documents we -- I think I shared with Mr. Farber, we came across a few documents from Simon, we received some documents from Simon and we disclosed to Forall ten days prior to the arbitration, and those have not been submitted into evidence yet. This is a document we received Saturday or Sunday right before arbitration.

THE ARBITRATOR: Anything further to argue to me, Mr. Brown?

MR. BROWN: Yes. His only objection here is like a timeliness argument. There's no prejudice here. They were directly asked for this document, and documents like it in -- on July 18, 2018.

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Here's my document demand.

They didn't produce it, and it goes directly to the credibility.

This witness is sitting here saying he didn't know about the prior operation and in his business plan, which will layout clearly his business plan, should have been produced. It puts a lie to that testimony.

THE ARBITRATOR: No. I think life is a two-way street, and my ruling is that if the document has not been produced in a timely manner previously, I'm not going to let it in. And I think Mr. Lewis is correct, and I'm going to sustain his objection. I'm not going to take the document. Go ahead. Next point, Mr. Brown.

MR. BROWN: You know what, I'm going to ask for a minute to collect my thoughts.

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sending this --

A. Yes.

Q. I didn't hear your answer.

A. I have to read it at first.

Q. Okay. Sorry.

MR. LEWIS: Can you repeat which exhibit number this is?

THE ARBITRATOR: He said it's 120.

MR. BROWN: 120. It's in the respondent's set of R books.

It came in.

A. Okay.

Q. And this was only a couple of days or two weeks after that e-mail Mr. Spano had sent to you that we were just looking at, right, same time frame?

A. For the -- which e-mail you talking about [sic]?

Q. The one that we looked at on the discounts.

A. Could be.

Q. Do you see here you state, "Unfortunately, as with the predecessor

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THE ARBITRATOR: All right.

(Whereupon, a recess was taken at this time.)

THE ARBITRATOR: Mr. Brown, we can't see you at this point.

MR. BROWN: Yes. I'm coming back on. Thank you very much for that.

THE ARBITRATOR: Do you have any further questions?

MR. BROWN: I do. I'm going to -- For all bates number 126, I will get you the corresponding joint exhibit. This was one of the documents that was objected to, but it came into evidence.

Exhibit 120, which might be in respondent's book, Mr. Farber, and it was on screen. Can you guys see that? Am I sharing it?

THE ARBITRATOR: Not yet.

Q. Dr. Hamad, please take a moment and look at this letter, and do you see the date of this letter? Do you recall

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Pal Zileri store in Las Vegas, Sarah has found that operating the store in profitable manner would be a near impossibility."

A. Yes, I see.

Q. Isn't it true that you knew about that Pal Zileri store prior to entering into the license agreement in 2011?

A. We were talking about our operation. We were not talking about the old operation.

THE ARBITRATOR: Let's focus on the question. The question was: Is it not true therefore that you knew about the prior store in Las Vegas?

THE WITNESS: I don't think around that time we knew about it. I'm not sure.

Q. I'm going to go to another document. Exhibit Number 110. Let me just pull it up on my screen.

Can you see my screen, Dr.

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Hamad?

A. Yes.

Q. And have you seen this letter before?

A. I don't recall.

Q. This letter is from Jim Veneruso who represented Forall USA; do you recall that?

A. I don't know. I don't recall.

Q. And Lee Levin, he represented Sarah; is that right?

A. Yes.

Q. And you see Mr. Veneruso writes here, "We have been informed that your client, Dr. Hamad, by e-mail dated June 5, 2015, advised Forall that he will be notifying the Forum Shops at Caesars Palace (landlord) that Sarah LLC (Sarah), would transfer the store to the small effective October 1, 2015." Do you see that?

A. I see it, yes.

Q. And Mr. Veneruso writes to your counsel, "Please be advised that Forall

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does not consent to the proposed transfer of the store by Sarah to the landlord and any other party at this time, and that all rights are reserved under the party's rights and retail operation agreement, and that the lease agreement between Sarah and landlord, which provides Forall with the right of assignment of the lease." Do you see that?

A. Yes.

Q. What did you do when Mr. Levin got this letter?

A. I don't recall the whole episode.

Q. You see Mr. Veneruso notifies your client that this communication amounts to an anticipatory breach of the license agreement?

A. Yes.

Q. And he reserves all rights, right?

A. Yes.

Q. Isn't it true that at every

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point in time your -- you were advised -- you were represented by counsel in each of these agreements and discussions with Forall?

A. Yes.

Q. Did you contact Simon in June of '13 and say that we were going -- we were surrendering the lease?

A. June '13, I don't -- I don't recall it.

Q. Isn't this the time, June '13, when you were in discussions with Italnord to take over the management of the store?

A. June '13, I don't remember exact date, but probably after June [sic].

Q. But you knew Forall was insisting upon adherence to the license agreement, right, based on the letter and other communications and correspondence?

A. No.

Q. You didn't know that.

Did you have a sense that the

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eviction of Forall from the Pal Zileri store and the forced closure, and lay off of employees, and fire sale of product would cause damage to the Pal Zileri brand and Forall as an entity?

A. They should know this themselves.

Q. I'm sorry.

THE ARBITRATOR: He didn't ask you that. He didn't ask you what they should know themselves. He asked: Did you have sense that this caused harm to Forall?

THE WITNESS: If that cause harm to -- they knew about this a long time -- for a long time. Yes. They knew about it.

THE ARBITRATOR: He didn't ask you what they knew. He asked if you had a sense that the closing of the store, or the firing of the employees, the fire sale, all the things he enumerated, caused harm to

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 Forall?

3 THE WITNESS: Yes.

4 THE ARBITRATOR: Okay. Go
5 ahead.

6 MR. BROWN: I'm going to go
7 to another document. I'm going
8 to put on the screen what's bates
9 labeled 226, which is Exhibit
10 Number 150, and I'm going to
11 share screen.

12 Q. Sir, I'm going to put on the
13 screen what's marked -- what's been
14 admitted as Joint Exhibit 150.

15 Have you seen this letter
16 before?

17 A. No.

18 Q. Okay. Are you aware that on
19 July 25, 2016, Forum Shops filed a
20 complaint against Sarah LLC in Las
21 Vegas?

22 A. That was handled by the lawyer.
23 Yes, I think so.

24 Q. And have you seen this document
25 which was attached to the notice on

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 signed it, did you advise Forall that
3 you had canceled the lease that day?

4 I'm sorry. When your wife
5 signed it, did you, at any point, call
6 up Paolo Torello-Viera or anyone at
7 Forall that you had signed a
8 cancellation of lease or your wife had?

9 A. That was handled by the lawyer.

10 Q. But you didn't advise Forall?

11 A. You asked me this question
12 before and I told you.

13 THE ARBITRATOR: I know --

14 A. The answer is no.

15 THE ARBITRATOR: Okay.

16 Q. And sir, also attached to that
17 same document, okay, is a consent
18 agreement, and can you please tell me,
19 as I'm scrolling through it, it says,
20 "Stipulation and order for entry of
21 permanent writ of restitution, and
22 permanent writ of restitution."

23 Who was Mathew Dushoff?

24 A. A lawyer.

25 Q. Out in Nevada?

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 August 1st from the attorney to Forall.

3 It says, "Agreement cancelling lease,"
4 and it is signed by Sarah here.

5 THE ARBITRATOR: Give us a
6 document number, if you can,
7 Mr. Brown.

8 MR. BROWN: It's part of
9 that same exhibit, Mr. Farber.

10 THE ARBITRATOR: 150. Okay.

11 MR. BROWN: Yes. It was
12 attached to that letter. Okay.

13 Q. Do you recognize this signature
14 here, sir?

15 A. Yes.

16 Q. Who is that?

17 A. That's my wife.

18 Q. And the date, June 14, 2016?

19 A. Yes.

20 Q. And did you review with her at
21 that time this agreement of
22 cancellation of lease?

23 A. We reviewed with the lawyer,
24 yes.

25 Q. Okay. And -- and when you

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 A. I think so.

3 Q. And did he represent Sarah?

4 A. Yes, to my knowledge.

5 Q. And did you authorize him to
6 sign a writ of restitution and
7 eviction?

8 A. Again, that was handled by my
9 lawyer. I think so.

10 Q. Okay.

11 MR. BROWN: I'm going to
12 ask for five minutes to organize
13 my thoughts. I may be done, but
14 I just want to confirm that.

15 THE ARBITRATOR: All right.
16 Let's take a quick five.

17 (Whereupon, a recess was
18 taken at this time.)

19 MR. BROWN: I'm putting up
20 on the screen --

21 THE ARBITRATOR: Is Mr.
22 Lewis back on?

23 MR. BROWN: Yes. This is --
24 the reason I was delayed, I had a
25 little trouble locating it. It's

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a set-alone exhibit. But this is a letter that's attached to Respondent's Answering Statement, which is in exhibits -- in the exhibits as 102, but it's at the very end of 102. I think we talked about this letter previously in testimony, so it may have its own stand-alone exhibit number.

But nevertheless, it's in Respondent's Answering Statement as Exhibit 17 to the answering statement and with counterclaims.

Q. And, Dr. Hamad, if you can look at this letter, which is addressed to you, dated February 25, 2016, from Paolo Torello-Viera.

A. Yes.

Q. Do you recall receiving this letter in February of 2015?

A. Possibly.

THE ARBITRATOR: You possibly recall?

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point the arbitrator to any document by which your lawyer responded to this letter?

A. You're asking me or asking my counselor?

Q. Can you refer us to any written correspondence responding to this February 25, 2016, letter?

A. I think it was handled by the lawyer. If there's anything, he must have the document.

Q. But you don't know as you sit here today if there was a response?

A. Again, it was handled by the lawyer at that time.

THE ARBITRATOR: The question is: Do you know?

THE WITNESS: No.

THE ARBITRATOR: Okay.

Q. So you see here it says, "No other terms of the management agreement shall be deemed to be amended or modified, except expressly set forth herein." Do you see that language?

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THE WITNESS: I mean, I --

there was a letter, yes.

Q. You don't dispute that you received this, correct, at that time?

A. I don't know what time I received it, honestly.

Q. The -- in this letter Forall was seeking a 68 Sanction on its notice date under the management agreement, right, do you recall that?

A. Yes.

Q. And you never wrote back to Paolo in response to this letter, did you?

A. I think our lawyer did.

Q. You think your lawyer responded to this?

A. I think so, if my memory is good.

Q. When did he do that?

A. I don't know.

Q. How did he respond?

A. I don't know.

Q. Can you -- can you refer me or

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A. Yes.

Q. And Paolo goes on to say, "To the extent that Sarah does not agree and consent to the foregoing amendment and modification of the management agreement, please be advised that this letter shall serve as notice by Forall that it does not intend to take over the lease or the business, and that the management agreement shall expire at the end of the initial term September 1, 2016, and that Forall shall turn the Pal Zileri premises and business back to Sarah pursuant to the party's license agreement." Do you see that?

A. Yes, I do.

Q. And Paolo wrote, "I further remind that all rights and obligations under the license agreement remain in effect." Do you see that?

A. Yes.

Q. And he states, "Nothing herein shall modify or amend the rights and

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 obligations of the party's management
3 agreement not expressly stated herein";
4 correct?

5 A. Correct.

6 Q. And there's a counter signature
7 here. You never signed this, did you?

8 A. As I mentioned to you,
9 there's -- David Hochman was handling
10 this.

11 THE ARBITRATOR: The
12 question is --

13 THE WITNESS: No.

14 THE ARBITRATOR: You just
15 have the answer the question.

16 Q. Wasn't Paolo informing you that
17 he wanted more time to make the
18 decision, but if you were going to not
19 agree to that, then you needed to get
20 ready to take over the store in
21 September?

22 A. No.

23 Q. What's your understanding of
24 this letter?

25 A. My understanding that there is

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 he doesn't remember seeing the
3 letter, and now you're asking him
4 for what his understanding is of
5 the letter. I read the letter
6 carefully. I can get an
7 understanding of it as well as
8 the witness since he doesn't
9 recall seeing it. So I just
10 wonder if there's utility in
11 asking further in this regard.

12 MR. BROWN: Okay. One final
13 question.

14 Q. Dr. Hamad, is that your e-mail
15 address or an e-mail address that you
16 used at that time, February 2016, that
17 I'm looking at here,
18 "BHamad@SCBglobal.net"?

19 A. No.

20 Q. What e-mail did you use at that
21 time?

22 A. I have to -- I use
23 BHamadmd@gmail. I think I have -- I
24 mean, I remember not working [sic].

25 Q. Was that -- was that ever an

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 -- they refused to extend the lease and
3 they -- at that time, they wanted out
4 and they said, "No, we are not going
5 to, you know, continue to take the
6 management." That's my understanding
7 from the -- what's going on around that
8 time.

9 Q. Is that what -- is that
10 understanding based upon this letter?

11 A. I don't see the letter. I don't
12 remember seeing the letter, you know,
13 and details around -- I don't know.
14 Honestly, I don't know what happened
15 with this letter. It was handled by
16 the lawyer at that time, I think.

17 Q. Well, my question was: This
18 letter and your understanding of what
19 it said, and isn't this letter asking
20 for more time to make a determination
21 on the part of Forall --

22 THE ARBITRATOR: Counselor,
23 can I make a suggestion,
24 although, there's not an
25 objection? The witness testified

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 e-mail address that you used?

3 A. I used in the past, yes.

4 Q. And you -- are you denying that
5 that was an e-mail that you used in
6 February 2015?

7 A. I don't know what I used at that
8 time.

9 Q. Okay. And you don't know -- you
10 -- you've already stated you do not
11 dispute receiving this letter, though,
12 in February of '16; isn't that correct?

13 A. I told you I do not know. I
14 cannot recall.

15 MR. LEWIS: I am going to
16 lodge an objection. This has
17 been covered. That's asked and
18 answered.

19 THE ARBITRATOR: But there's
20 no question pending. He answered
21 the last question.

22 Counselor, I note that it
23 says "Via registered mail" as
24 well. Registered mail is usually
25 accompanied by a receipt that's

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 returned. Is such a receipt in
3 evidence to me now?

4 MR. BROWN: No. I don't
5 believe there is, Mr. Farber. I
6 don't think there's any question
7 that this --

8 THE ARBITRATOR: All right.
9 Go ahead.

10 MR. BROWN: I don't think --
11 let's put it this way, any
12 credible dispute that this letter
13 was sent and received.

14 THE ARBITRATOR: All right.

15 MR. BROWN: I guess that's
16 for you to weigh.

17 Q. Mr. Hamad -- Dr. Hamad, is your
18 testimony that you did not receive this
19 letter in February of 2016?

20 MR. LEWIS: Objection.
21 Asked and answered.

22 THE ARBITRATOR: Sustained.
23 Counselor, he's already said
24 three times that he does not
25 recollect. He does not know if

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 further questions.

3 THE ARBITRATOR: Mr. Lewis,
4 it may be that -- if you need to
5 consult with your client, it may
6 be a good time to take our
7 morning break to give you that
8 opportunity. Do you want that or
9 do you want to start? You're on
10 mute, Mr. Lewis.

11 MR. LEWIS: I'd appreciate
12 that, Mr. Farber.

13 THE ARBITRATOR: Okay. Then
14 why don't we take our mid-morning
15 break right now. And, Dr. Hamad,
16 do you have a lot of notes that
17 you made on the pad? So is
18 15 minutes adequate or do you
19 need a little more than that?

20 THE WITNESS: That's
21 adequate.

22 THE ARBITRATOR: So I've got
23 exactly 11:00. Let's resume at
24 11:15, and we'll go with the
25 re-direct at that point.

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 he got it or not.

3 MR. BROWN: Okay. Fine.
4 I'm going to one more exhibit.

5 THE ARBITRATOR: All right.

6 MR. BROWN: And it is
7 Exhibit 307. And I'm going to
8 pull it up on the screen.

9 Q. Dr. Hamad, can you look at this
10 e-mail?

11 A. Yes.

12 Q. And can you tell me if you sent
13 this e-mail on July 14, 2016, to David
14 Hochman, Amar Hamad, and Lee Levin; do
15 you see that?

16 A. Yes.

17 Q. And can you read it for the
18 record, your address, your e-mail
19 address from that e-mail?

20 A. BHamad@SBCglobal.net.

21 Q. So isn't it true that in 2016
22 you had used it and did in fact use
23 BHamad@SBCglobal.net?

24 A. Yes.

25 MR. BROWN: I don't have any

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1 CROSS-EXAMINATION OF DR. B. HAMAD
2 Thank you everyone.

3 (Whereupon, a recess was
4 taken at this time.)

5 MR. BROWN: I just want to
6 handle one evidentiary matter, if
7 I may.

8 THE ARBITRATOR: What is it?

9 MR. BROWN: So there was
10 some question, and I know I'm off
11 screen, that the February 25th
12 letter, which I was referring to
13 the answering statement, the --

14 THE ARBITRATOR: You said it
15 was Exhibit 102 at the end.

16 MR. BROWN: The second to
17 last -- the February 25th letter
18 where we were talking about
19 registered mail, that type of
20 thing.

21 That letter is in evidence
22 as a standalone item at Exhibits
23 302, 304 and 305, and those are
24 claimant's bates labeled
25 documents produced by claimants,

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RE-DIRECT EXAMINATION OF DR. B. HAMAD
so that letter from Paolo came
back from claimants and, very
obviously, received and in their
possession and produced in this
lawsuit.

THE ARBITRATOR: I take your
point. Anything else, Mr. Brown?

MR. BROWN: No.

THE ARBITRATOR: Mr. Lewis,
you may proceed.

RE-DIRECT EXAMINATION
BY MR. LEWIS:

Q. Dr. Hamad, do you remember being
asked about claimants -- your Statement
of Claims, a discussion about rent and
how that factored into the eviction or
termination of the lease; do you recall
testifying about that?

A. Yes.

Q. Isn't it true that -- that --
what is your understanding -- what is
your understanding as to whether rent
played a role in Simon refusing to
continue on the lease with Pal Zileri?

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RE-DIRECT EXAMINATION OF DR. B. HAMAD

THE ARBITRATOR: Counsel, I
said on re-direct only new
matters. I can tell you his
understanding because he
testified it twice already, that
the rent was always rent and that
Simon was upset with it, so it
clearly figured in.

MR. LEWIS: Mr. Farber, this
is a specific effort to clarify
the statements of claims, and
Mr. Brown brought up --

THE ARBITRATOR: Then
rephrase your question in terms
of the statement of claim,
because you didn't do so.

Q. Dr. Hamad, in the Statement of
Claims in the Paragraph that Mr. Brown
showed you, you have alleged that rent
caused Simon to proceed with eviction
proceedings and canceled the lease; do
you recall that?

A. Yes.

Q. Was rent the only factor?

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RE-DIRECT EXAMINATION OF DR. B. HAMAD
A. There is other factors. There
were other factors.

Q. Such as?

A. The poor performance of the
store. I think I mentioned, also, was
performing very poorly [sic].

Q. We're talking specifically about
what you have in your statements of
claims, and I want to be sure.
Mr. Brown asked you if you did indeed
allege in the Statement of Claims that
there was poor performance; do you
recall that?

A. Yes. Yes. There was a very
poor performance, and even yesterday I
testified that Simon was watching the
numbers and he was not happy.

THE ARBITRATOR: No need to
repeat yesterday's testimony.

Q. Okay. The question I have is:
But did you allege poor performance in
your Statement of Claims?

A. Yes.

Q. Okay. I'm going to put that up

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RE-DIRECT EXAMINATION OF DR. B. HAMAD
very quickly and allow you to point
that out for, Mr. Farber.

THE ARBITRATOR: I think it
was Paragraph 13.

MR. LEWIS: Yes. And the
paragraph we're referencing, Mr.
Farber, is 12, and I've gotten
there now.

THE ARBITRATOR: All right.
Q. Are you able to see my screen,
Dr. Hamad?

A. Yes.

Q. Will you read Paragraph 12 for
the record, please.

A. "Upon information and belief,
Forall's operation performance with the
Pal Zileri store from March 2015 to
August 2016 was poor, at best, and led
to economic loss that had likewise been
experienced by Sarah LLC during its
operations from September 2011 to
September 2013".

Q. Is it fair to say that your
allegation in Paragraph 13 is

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD
2 incomplete as it only references
3 represent as factor?

4 A. It's another factor, yes.

5 Q. So I just want to clarify that
6 for the arbitrator. Okay?

7 A. Okay.

8 Q. Dr. Hamad, you were asked about
9 the letter agreement and whether there
10 was a writing -- excuse me -- whether
11 you had previously informed Forall that
12 you would be looking to work with Simon
13 to find a new tenant; do you recall
14 being asked that?

15 A. Yes.

16 Q. To be clear, what is your
17 understanding as to whether or not you
18 had Forall's approval to work with
19 Simon and find a new tenant in October
20 of 2016?

21 A. Yes, I did.

22 Q. And what do you base that
23 understanding on?

24 A. It was a couple of
25 communications between Alfonso and

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD
2 A. Yes.

3 Q. And you don't see any e-mail
4 from Mr. Torello in here to saying,
5 "No, I don't agree or I don't approve
6 of this," you don't see anything in
7 here like that?

8 A. No, I do not.

9 Q. And, in fact, you do see Alfonso
10 Entebi writing to the group, including
11 Paolo Torello-Viera saying, "According
12 to Paolo, he is advancing the prospect
13 of a new tenant. Please confirm this
14 and we can send them a copy of the
15 executed lease agreement between Sarah
16 and the mall." Do you see that?

17 A. Yes.

18 Q. Do you recall if you did send a
19 copy of the lease agreement to Alfonso
20 and to Paolo Torello-Viera at that
21 time?

22 A. I think it was done.

23 Q. Well, according to your e-mail
24 here on October 16, 2014, you write,
25 "Hi, yes. You can send a copy of the

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD
2 Luca, and he approved the part with
3 Simon.

4 Q. Approving you to work with Simon
5 to find a new tenant?

6 A. Yes.

7 Q. Are there any -- okay.
8 Dr. Hamad, do you see my screen?

9 A. Yes, I do.

10 Q. Is this one of the e-mails
11 you're referring to?

12 A. Yes.

13 Q. And this is an e-mail string
14 back in -- starting October 8, 2014; do
15 you see that?

16 A. Yes.

17 Q. And here Alfonso asks Paolo --
18 excuse me -- asks your brother, "As we
19 talked and explained, I ask you to
20 please confirm to me and Paolo Torello,
21 CEO of Americas Pal Zileri, that we are
22 authorizing and can go forward with the
23 prospective tenant for a possible
24 takeover of the store." Do you see
25 that?

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD
2 lease to, assuming, to the new tenant."
3 Do you see that?

4 A. Yes.

5 Q. And October 16, 2014, is before
6 you entered into the letter agreement
7 on October 23, 2014, correct?

8 MR. BROWN: I just want to
9 note my objection to that last
10 question. Mr. Lewis read into
11 the record something that's not
12 in the e-mail. It says, "Copy of
13 the lease," it doesn't say, "To
14 the new tenant."

15 MR. LEWIS: I did say
16 purportedly or assumingly to the
17 new tenant, but I appreciate your
18 point.

19 THE ARBITRATOR: I note that
20 it just says, "Hi, yes, you can
21 send a copy of the lease." All
22 right. That's what it says.

23 Go ahead Mr. Lewis.

24 Q. It came a time, though, did it
25 not, Dr. Hamad, that you entered into

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RE-DIRECT EXAMINATION OF DR. B. HAMAD
an agreement to rescind the letter
agreement to Simon, right?

A. Right.

Q. Mr. Brown asked you about that?
Do you recall Mr. Brown asking you
about that?

A. I think so.

Q. And what was the reason that
Sarah sought to rescind the letter
agreement with Simon?

A. Because I called at that time
and said the company would take over
the store, for Forall to take over the
store.

Q. Forall was going to take over
the store?

A. Yes.

Q. Mr. Brown asked you about
whether you memorialized or Mr. Farber
asked you about whether you
memorialized in an e-mail or some kind
of writing what you had been told by
the CEO, Marco Baritza, in Italy, in
November of 2012; do you recall that?

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RE-DIRECT EXAMINATION OF DR. B. HAMAD
A. Yes.

Q. Did you believe it was necessary
to memorialize that or -- speak more to
that, please, what your impressions
were when you returned to Italy in
November of 2012?

A. That Mr. Marco was trying to
help, and he said, "You can buy
whatever, you know, you need it."
There was no enforcement of the license
agreement.

And I think if you go to season
number three, the purchase was way less
than was stated in the license
agreement; that was the approval of
Luca and Mr. Marco.

Q. So you're saying they put that
into practice; is that your testimony?

A. Yes.

Q. When you purchased below the
required amount in season three, did
anyone ever say you still owe some
additional money, you still have to
make additional orders?

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RE-DIRECT EXAMINATION OF DR. B. HAMAD

A. No. That an was agreement. You
know, whatever -- you know, whatever
you need, that was the thought and the
agreement.

Q. Mr. Brown asked you whether you
had an appreciation for the fact that
an eviction or first part if you had an
appreciation that closing a store for a
high-end brand would have an impact on
the brand; do you remember Mr. Brown
asking you about that?

A. Yes.

Q. But isn't it true that Forall
agreed to allow Simon to -- and Sarah
to work to find a new tenant and turn
the store back into Simon before August
of 2016?

A. That's true.

Q. In fact, Forall had agreed for
Sarah to work with Simon to find a new
tenant and turn the store back into
Simon before you entered into the
management agreement; isn't that
correct?

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RE-DIRECT EXAMINATION OF DR. B. HAMAD

A. That's correct.

Q. So isn't this a better question,
whether Forall had an appreciation as
to whether closing the store would have
an impact on their brand?

MR. BROWN: Objection.

THE ARBITRATOR: Sustained.

Counselor, I don't think it's
appropriate to ask a witness what
a better question would be.

Let's move on. He's a doctor,
and I don't think he's a lawyer.

By the way, what kind of
doctor are you? I know your
brother said he's an oncologist.

THE WITNESS:

Gastroenterologist.

THE ARBITRATOR: Okay.

Mr. Lewis, go ahead.

Q. So the agreement for Simon and
Sarah to work together to find a new
tenant in 2016, did that require a
lawsuit to be filled formally evicting
Forall from the store?

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD

2 MR. BROWN: Objection.

3 THE ARBITRATOR: Wait. Do
4 that one again. Did the
5 agreement require a lawsuit; is
6 that the question?

7 MR. LEWIS: I'll ask it
8 better, but you're getting to the
9 heart of it.

10 Q. The agreement that you entered
11 into in June of 2016 with Simon, to
12 turn the store back over to Simon for a
13 new tenant to operate it, did that
14 require Simon to evict Forall from the
15 store?

16 A. Well, Forall refused to leave
17 the store. This is what the eviction
18 was filed. It -- if they left the
19 store, there would be no eviction and
20 there would be no damage done to them.

21 Q. Mr. Brown showed you a letter
22 dated February 25, 2016, he spent
23 considerable time trying to offer
24 evidence that you received that letter;
25 do you recall that?

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD
2 of the company, correct?

3 A. Yes.

4 MR. LEWIS: I have nothing
5 further.

6 THE ARBITRATOR: Mr. Brown,
7 anything else?

8 MR. BROWN: It really goes
9 to this evidentiary matter, and I
10 have all -- all that I need to
11 demonstrate that Mr. Hamad
12 received that letter, so I
13 actually would like a stipulation
14 from counsel that they
15 acknowledge that the February 25,
16 2016, letter was sent and
17 received by his client, as well
18 as their Counselor.

19 If they do not stipulate,
20 then I will take the time and
21 bring the arbitrator through the
22 e-mails, documents, that I have
23 in possession that are in
24 evidence, and some of them aren't
25 even in evidence, and they were

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD

2 A. Yes.

3 Q. Does that letter that Mr. Brown
4 showed you bear your signature?

5 A. No.

6 Q. Dr. Hamad, what was Dr. Amar
7 Bachar's [sic] role with Sarah LLC?

8 A. He was an agent of the company.

9 Q. Was he authorized to act on the
10 company's behalf?

11 A. Yes.

12 Q. Did he in fact act on the
13 company's behalf?

14 A. Yes.

15 Q. Were there discussions about Dr.
16 Amar Hamad serving as an officer of
17 Sarah LLC?

18 A. There were talks about being
19 treasurer, but I don't recall if that
20 was formalized.

21 Q. You don't recall whether it
22 formalized?

23 A. Yeah.

24 Q. But you are sure that Dr. Amar
25 Hamad was an agent and acted on behalf

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1 RE-DIRECT EXAMINATION OF DR. B. HAMAD
2 produced by claimants and I will
3 introduce them into evidence.

4 That's my only condition here, so
5 -- but I rather move on. I think
6 it's emphatically clear that they
7 sent this document back to us.
8 They had it. So I just seek that
9 stipulation.

10 THE ARBITRATOR: Well, it's
11 up to Mr. Lewis.

12 Mr. Lewis, do you want to so
13 stipulate.

14 MR. LEWIS: Mr. Brown, if
15 you're looking for a stipulation
16 that we received a piece of paper
17 in February 25, 2016, and did not
18 sign it and we produced that
19 piece of paperback, we will
20 absolutely so stipulate.

21 MR. BROWN: I'll stipulate
22 that -- no. I won't stipulate.
23 He didn't -- the -- I don't see a
24 copy of him signing that letter
25 in evidence. In fact, there was

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no response received by the witness.

THE ARBITRATOR: Can I make a suggestion because I don't know why where you went to law school -- where I went to law school, if your adversary gives you something, don't argue further. Just say, "thank you," and you're done. He said he'll so stipulate, so you're done.

MR. BROWN: Okay. I'm done.

THE ARBITRATOR: Anything else you want to ask Dr. Hamad?

MR. BROWN: No, sir.

THE ARBITRATOR: Dr. Hamad, we thank you very much for being a witness in this proceeding. You're excused.

Mr. Lewis, do you at this point have any other witness, except your rebuttal expert?

MR. LEWIS: Not at this time.

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THE ARBITRATOR: Mr. Brown, who is your first witness?

I'd like to call Mr. Paolo Torello-Viera, but he's going to zoom in now. I have to get him the details. It will take us one minute, if you don't mind.

THE ARBITRATOR: Mr. Brown, who is your first witness, please. Mr. Brown, can you hear me? Hello?

MR. BROWN: One minute. We need one minute.

THE ARBITRATOR: All right. Who is your witness, please.

MR. BROWN: Mr. Paolo Torello-Viera.

THE ARBITRATOR: Mr. Torello-Viera, good morning. Do you hear me?

THE WITNESS: Yes. Loud and clear.

THE ARBITRATOR: Would you stand, please, but keep your face

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so that I can see you.

Would you raise your right hand, sir. Do you solemnly swear that the testimony you're about to give in this arbitration proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE ARBITRATOR: You could be seated, sir, and spell your first name, and give us an address, which could be either home or work.

THE WITNESS: Paolo Torello-Viera, P-A-O-L-o, T-O-R-E-L-L, hyphen, V-I-E-R-A. 328 Tappan Road, Norwood, New Jersey 07648.

THE ARBITRATOR: Mr. Torello-Viera, good morning. I'm Gene Farber. I'm the arbitrator in the matter. Your lawyer --

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Mr. Brown, you're handling it?

MR. BROWN: So there -- at the end of this direct, Your Honor, my co-counsel, Mr. Crowe, does have several questions pertaining to the issue on damages, so I would ask the authorization to essentially --

THE ARBITRATOR: That's fine. If you want to split it up, that's fine. Mr. Lewis would have the same right if he made the same request, so fine.

Mr. Brown is going to start by asking you some questions, sir, and what I appreciate your doing is be sure to let him finish each question and then pause. Do you see Mr. Lewis on the screen? He --

Mr. Lewis, you're handling this one as well?

MR. LEWIS: Yes, Mr. Farber.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 THE ARBITRATOR: Mr. Lewis,
 3 if he says the word "objection,"
 4 do not answer the question until
 5 I tell you whether or not you
 6 should do so. If he does not say
 7 the word "objection," then please
 8 just try to respond to the
 9 question as directly and as
 10 succinctly as you can. All
 11 right.

12 Mr. Brown, why don't you
 13 proceed.

14 P A O L O T O R E L L O - V I E R A, the
 15 witness herein, having been first duly
 16 sworn by the arbitrator, was examined
 17 and testified as Follows:

18 DIRECT-EXAMINATION
 19 BY MR. BROWN

20 Q. Good morning, Paolo. How are
 21 you?

22 A. Good morning.

23 Q. Can you just briefly describe
 24 your experience in the luxury retail
 25 space?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 you take a moment and reorganize
 3 yourself as you see fit.

4 THE WITNESS: As I speak
 5 now, can you hear me loud and
 6 clear?

7 THE ARBITRATOR: Yes. Much
 8 better.

9 THE WITNESS: Thank you so
 10 much.

11 THE ARBITRATOR: Mr. Brown,
 12 why don't you go ahead? The
 13 question was about the experience
 14 in the industry and he was just
 15 telling us about his 25 years of
 16 experience.

17 So why don't you proceed,
 18 Mr. Torello-Viera. Go ahead.

19 A. I've been in this industry for
 20 25 years and I've been managing
 21 companies and subsidiaries of groups
 22 like Ermenegildo Zegna, Brioni, Pal
 23 Zileri and Lanificio F.lli Cerruti.

24 Q. And sir, what is your -- what is
 25 your native language?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 A. I've been in industry for over
 3 25 years now, and I've managed
 4 companies --

5 THE ARBITRATOR: Mr.
 6 Torello-Viera, if you could speak
 7 closer to the mic.

8 MR. BROWN: I'm so sorry to
 9 do this. We're in a very big
 10 conference room for COVID
 11 reasons, but I think I need to
 12 reorganize where my laptop is
 13 versus the -- because we can only
 14 dial through the one connection.
 15 So I have to move --

16 THE WITNESS: Can you hear
 17 me now?

18 THE ARBITRATOR: Why don't
 19 you take a moment and re-arrange
 20 yourselves. Is Mr. Torello-Viera
 21 in the same conference with you,
 22 Mr. Brown?

23 MR. BROWN: Yes, he is.

24 THE WITNESS: Mr. Farber.

25 THE ARBITRATOR: Why don't

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 A. Italian.

3 Q. And is -- if at any point today
 4 you don't understand the question, you
 5 need me to rephrase it, or you may
 6 think you know, or you're not certain
 7 as to its translation, just let us know
 8 and we can revisit that. Okay?

9 A. Appreciate it.

10 MR. BROWN: And Maggie, if
 11 you need the spelling of any of
 12 those, we can provide that.

13 Q. Paolo, are you currently
 14 employed by Forall?

15 A. No, I'm not.

16 Q. Was there a time that you were?

17 A. Yes. From July 2014 until
 18 December 2016.

19 Q. And what was your title with
 20 Forall?

21 A. CEO president of the Americas.

22 Q. And when you joined Forall, was
 23 Luca Spano working with Forall?

24 A. Yes.

25 Q. And when did -- how soon after

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 your arrival did -- did Luca move on?

3 A. Couple of months later.

4 Q. And in July -- what was the
5 first time that you had any involvement
6 with Sarah LLC and/or doctor -- Dr.
7 Hamad Bachar or Amar?

8 A. Directly with the doctors, I
9 don't recall. I know that the name of
10 Sarah and the doctor was often on the
11 table because of the Vegas situation
12 and Alfonso Entebi or Italnord been
13 managing the store.

14 Q. So when you took over, Italnord
15 was operating the Las Vegas store?

16 A. Yes, they were.

17 Q. And at that time, Forall
18 maintained a showroom in New York City;
19 is that correct?

20 A. Yes. We had a showroom.
21 Initially, it was on 6th Avenue and
22 Madison, and then we move it to a
23 bigger space, to a more luxurious space
24 on 5th Avenue.

25 Q. And when was that move made?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Mr. Farber. Thank you.

3 Q. So if you could just tell us
4 about the business, how it worked from
5 Forall's perspective?

6 A. So to answer, Mr. Farber, you
7 know, it is -- we had two type of
8 clientele, B to B, business to
9 business. So we had clients who had
10 the store who are retailers, that Sarah
11 LLC, like the Nordstrom, the Neiman,
12 the Saks, Dubois, you name it.
13 And then we had the B to C
14 which, the business to consumer, which
15 is the sales we are making directly to
16 consumer when we managed the Las Vegas
17 store.

18 Q. Okay. But --

19 A. Our client -- our B to B clients
20 were the top luxurious clients,
21 retailers in the country, and not only
22 also in Canada, just to name one, you
23 know, Harry Rosen. And these guys --
24 these clients, they were running brands
25 like Ermenegildo Zegna, like Brioni,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 A. That move -- it was done some
3 time in 2015.

4 Q. Was Las Vegas -- did -- the Pal
5 Zileri in Las Vegas, was that
6 considered the flagship store at that
7 time?

8 A. It was the only store that we
9 had at that time, so absolutely. It
10 was the flagship store.

11 Q. And can you describe to me
12 during your -- your time period at
13 Forall, who its clientele was, how
14 sales were made to various entities,
15 and what was the business of Forall?

16 THE ARBITRATOR: Hang on a
17 minute. Counselor, when you
18 asked him that question, you want
19 to distinguish clientele from the
20 New York showroom, and clientele
21 in the Las Vegas store, because
22 you just said, "Clientele," and
23 my suspicion is those are two
24 very different kind of clientele.

25 MR. BROWN: Good point,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 like Cornelian, Canali, so all the top
3 brand on the men apparel luxury
4 industry.

5 Q. And those clients, would they
6 come to the showroom in New York City
7 and make purchases and buys --

8 A. These clients, yes. They come
9 to the show. We have a collection.
10 Our inventory has two collections a
11 year. A fall, winter, and a spring,
12 summer. We call it F/W and S/S.

13 Every collection is divided, is
14 split into, let me say, sub-collection.
15 There are the Father's Day collection
16 and the fall collection. And the
17 spring, summer is divided into the
18 closed collection and the spring,
19 summer collection, but I don't want to
20 go too much in detail in that.

21 We prepare the collection. We
22 present them at the showroom for
23 specific windows in order to guarantee
24 specific deliveries because usually the
25 turn-around time from when you get the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 orders, when you start shipping the
3 merchandise into the store is four to
4 six months.

5 Q. Okay. And you were present the
6 last two days, right, for the testimony
7 of claimants in this matter, correct?

8 A. Yes.

9 Q. The -- when -- was -- to your
10 knowledge, was Sarah a client of Forall
11 while it operated the store in Las
12 Vegas?

13 A. Sarah was -- operated the store
14 was at the same level of service that
15 we provided to the other client [sic].
16 Again, the Nordstrom, the Saks, with
17 additional support, because it was --
18 even it was managed by them -- had our
19 name on the door.

20 And for that reason, Mr. Spano
21 was at the store, as he mentioned,
22 almost every month, in order to make
23 sure that the store was run properly.

24 Q. And was -- who are the
25 competitors, or specific to when you

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 were there, who are -- who were the
3 competitors or competitive brand to Pal
4 Zileri?

5 A. Ermenegildo Zegna, that I worked
6 for almost 10 years, Brioni that I
7 worked for more than two years,
8 Corneliani, Canali. Those are the --
9 the main, main competitors, our target,
10 was Corneliani and Canali.

11 Q. So in that market space, it's
12 very much a competitive market for
13 high-end luxury menswear, correct?

14 A. Pal Zileri was at the opening of
15 the high-end luxury. You know, the
16 pyramid, we were in -- towards, you
17 know, the top of the pyramid, but the
18 opening of the luxury.

19 Q. Okay.

20 A. We were far from, you know, past
21 production those kind of things. We
22 were not a Zara or an H&M.

23 Q. You were above those?

24 A. Way above. It's like, with all
25 due respect, buying a Ford or buying a

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 Ferrari.

3 Q. Okay. When you came and started
4 as CEO, did you -- did there come a
5 time where you became familiar with the
6 license agreement that was between
7 Forall and Sarah for the Pal Zileri Las
8 Vegas store?

9 A. Yes. It was my duty to document
10 myself and say what was going in every
11 single aspect of the business, you
12 know, including the relationship
13 between Forall and Sarah.

14 Q. And the license agreement that's
15 been introduced into evidence in this
16 case, you were present for a lot of
17 that testimony; are you familiar with
18 that license agreement?

19 A. Yes.

20 Q. Have you seen it and read it
21 before?

22 A. Yes, I do.

23 Q. And during the time that you
24 were CEO at Forall, you were familiar
25 with that document, correct?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 A. Absolutely.

3 Q. And were you familiar with the
4 management agreement that was in place
5 between Sarah and Italnord?

6 A. Yes. I -- I made myself
7 familiar with it, although, I didn't
8 sign it because it was prior to my
9 arrival to Pal Zileri, but yes. I had
10 to because also Alfonso Entebi and the
11 owner of Italnord is Forall's business
12 partner in Mexico with a joint venture.

13 Q. So at that time you had occasion
14 to look at -- look at and refer to that
15 document and the rights and obligations
16 that were in place?

17 A. Yes. And to that extent, I want
18 to clarify that -- first of all, I have
19 degree in business management. I'm not
20 a lawyer. So any kind of
21 communications and changes could have
22 been made to the agreement, to any kind
23 of agreement, would have been run by
24 our legal office. That is your firm,
25 Mr. Veneruso before, and we also have a

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 legal counsel at Forall's head office.

3 But I would not have done
4 anything on my own before having this
5 approved or checked by the legal
6 department. Because again, I'm not a
7 legal person. I have a business
8 expertise, not legal.

9 Q. So -- and your practice during
10 that period of time as CEO of Forall
11 was to review these types of matters
12 and issues with counsel; isn't that
13 correct?

14 A. Absolutely. Because my major
15 focus -- sorry guys -- was to run a
16 business and to grow a business and
17 make it profitable and eventually
18 support, you know, some recovery in
19 areas that were not performing as
20 expected, if they were not up to the
21 part the expectation of the brand.

22 We also have to constitute one
23 additional piece to the puzzle, that
24 is, in 2014 there was a change of
25 ownership, and this is why, you know, I

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 did you view the Pal Zileri store in
3 Las Vegas as an important venture to
4 succeed for purposes of the Pal Zileri
5 brand?

6 A. It was. Because as you asked me
7 before, that was our flagship store for
8 the time being, because we inherited
9 that. And we wanted to make sure that
10 the store would have reflected the
11 image or, you know, the new imagine
12 that Pal Zileri was purveying to the
13 market.

14 I mean, when you go into a
15 re-organization, like we were doing, it
16 takes time. What sometimes is not
17 clear, you know, to the outside world,
18 and because, you know, we live and
19 breath this every day, is the fact that
20 every action that you take, it take --
21 it usually takes one year before you
22 see the result.

23 Think about, as I said before,
24 it takes six months for the product to
25 be ordered from when you order till you

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 came on board. I was appointed as CEO
3 of Forall USA.

4 The company Forall Italy, so the
5 parent company, was acquired by
6 30 percent. It was Arafa Holding; that
7 is an Egyptian company, and 70 percent
8 is Mayhoola for investment.

9 So there was a change of
10 ownership between Mr. Baritza, which I
11 heard his name many times during this
12 day, and the Leon family to Mayhoola
13 and Arafa.

14 Just for your information,
15 because I think it's important to know,
16 Mayhoola for investment is the founder
17 from the royal family of Qatar.

18 THE ARBITRATOR: Could you
19 spell "Mayhoola"?

20 THE WITNESS: Yes, sir.

21 It's M-A-Y-H-O-O-L-A.

22 A. And Mayhoola, on top or in
23 addition to Pal Zileri, they owned
24 Valentino and they own Balmain.

25 Q. And during your tenure as CEO,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 produce it. Before you have the lead
3 time in order to put in the collection,
4 then it goes to the store, it has to be
5 sold and it has to start being
6 appreciated by market [sic]. But it's
7 a lengthy and to a certain extent, you
8 know, tedious process.

9 Q. So is it fair to say like a
10 venture such as the Pal Zileri store in
11 Las Vegas would take a couple of years
12 to develop, grow, and ultimately become
13 profitable?

14 A. Yes. And to stress that, you
15 know, when we came on board, and when I
16 say "we," you know, the new management
17 that was the -- headquarter CEO was
18 Paolo Viera, and know it's easy to mix
19 the names, Paolo Viera and Paolo
20 Torello-Viera.

21 But with Paolo Viera, one of the
22 first things we decided to do was to
23 develop a new store concept, that we
24 initially roll out in Milan, because
25 Milan is where they have the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 headquarter, the showroom, it's
3 basically the flagship store,
4 world-wide flagship.

5 And we already knew -- were
6 thinking and considering of expanding
7 the concept including the Vegas store.

8 THE ARBITRATOR:

9 Mr. Torello-Viera, you testified
10 that one of the first things that
11 you did was to review the license
12 agreement. And you said you
13 thought that was an important
14 part of your initial tasks.

15 And my question is: Who
16 gave you the license agreement?
17 Where did you get that from?

18 THE WITNESS: It was at our
19 office in New York.

20 THE ARBITRATOR: In the
21 office of New York. All right.
22 And when you saw the license
23 agreement, did you receive any
24 information from anyone that any
25 portion of that license agreement

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 30 percent or the 70 percent,
3 anyone in ownership tell you that
4 there had been any changes to the
5 license agreement?

6 THE WITNESS: No, I was not.
7 And --

8 THE ARBITRATOR: Okay.
9 That's all right. As long as you
10 said, "No," that's the answer I
11 need.

12 Go ahead, Mr. Brown.

13 Q. Italnord was managing the store
14 for Sarah?

15 A. Yes.

16 Q. And do you have an understanding
17 as to whether or not Italnord had
18 minimum purchase requirement with
19 Forall?

20 A. I don't have visibility to the
21 data anymore, but as far as I
22 recollect, and I may be wrong, they
23 were buying according to the minimums
24 that were in the Sarah agreement, the
25 famous \$90,000.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 had been changed or amended?

3 THE WITNESS: Sir, what I
4 did -- and I'm sorry to go back
5 to my --

6 MR. BROWN: I want to be
7 careful here, Mr. Farber, it --
8 not that, you know, I don't want
9 to hear this answer, but the
10 instructions to this witness,
11 really, there are privileges that
12 may apply.

13 THE ARBITRATOR: Fair
14 enough. You don't have to tell
15 me anything about a conversation
16 with a lawyer, but he didn't tell
17 me he got it from the lawyer. He
18 said it was in an office, so I
19 didn't perceive that there was
20 anything from a lawyer.

21 If there's a conversation
22 with a lawyer, you don't have to
23 tell me about that. But did
24 anyone else from any of the
25 investors, the new investors, the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 But I would like Palma Settimi
3 to confirm that. I may be wrong. My
4 recollection is they were committed
5 also to the 900,000.

6 Q. Isn't it fair to say that your
7 understanding that Italnord was
8 operating the Las Vegas pursuant to the
9 license agreement?

10 A. Yes.

11 Q. What was your overall
12 impression -- did you ever go to the
13 Vegas?

14 A. I was there multiple times.

15 Q. And what was your overall
16 impression about that store's location
17 in the mall, that type of thing?

18 A. The location was -- I mean, this
19 store needed some make-up, because our
20 industry evolved so rapidly that every
21 three, four years have -- not to redo
22 the full blown store, but you need to
23 do touch-ups and adjustments and stuff.

24 Let's talk for a second about
25 the Forum at Caesars. The Forum at

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 Caesars is a big rectangle, and luxury
3 is on one end where Pal Zileri was,
4 Canali, many brands of the LVLH Group,
5 and then where now our MCM is, and MCM
6 is another luxury brand.

7 Q. MCM is the tenant --

8 A. That took over the space. But
9 as we said before, one of our main
10 competitors is Canali and Canali is
11 right in that area.

12 Any other area of the Forum Shop
13 can be open, but it's not the proper
14 area for a luxury brand.

15 Q. And based upon your experience
16 in this space, not just exclusive to
17 Forall, is it important for a luxury
18 brand to be properly situated within a
19 mall, like the Forum Shop, among its
20 other competitors?

21 A. It's key. It's mandatory. And
22 I think that this is proven by what
23 Simon did in the Woodbury Common
24 outlets.

25 Q. Woodbury Common is Upstate?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 different.

3 Q. Just for illustrative purposes,
4 and I shared this with Mr. Lewis. I'd
5 like to pull up the map of the Forum
6 Shop that's online. Mr. Farber, just
7 so the arbitrator has an understanding
8 of the space and where it was.

9 THE ARBITRATOR: All right.
10 Any objection, Mr. Lewis?

11 MR. LEWIS: I'd like to note
12 that this is a similar map to a
13 map that claimants included in
14 their exhibit list which
15 Mr. Brown objects, so those
16 positions are inconsistent. I
17 just want to note that to
18 Mr. Farber.

19 THE ARBITRATOR: Look, right
20 now that's a separate issue. Do
21 you have any objection to
22 Mr. Brown showing me this or not?

23 MR. LEWIS: If Mr.
24 Torello-Viera can provide some
25 foundation to the authenticity of

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 A. Upstate. Because Woodbury
3 Common was open, at the beginning, all
4 scattered. I mean, Zegna could have
5 been on one end, Canali on the other,
6 Gucci in the middle.

7 After 10 years, they reshuffled
8 the whole thing and they grouped by
9 product category, by collection. So in
10 order that -- you want to by luxury,
11 you know that you go in a certain
12 place. You want to buy mass
13 production, you go in another place.
14 You want to by jewelry, you go to
15 another destination.

16 But everything had to be at
17 hand. Because also Simon, what they
18 care, yes, they look for the wealth of
19 every single brand, but they look at
20 the big picture [sic]. Because whether
21 they buy from Canali or they buy from
22 Pal Zileri, the important thing is
23 that, you know, taking this brand
24 [sic]. That's from Simon's
25 perspective. My perspective is totally

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 this particular map, I have no
3 objections.

4 THE ARBITRATOR: Go ahead,
5 Mr. Brown.

6 Q. This is the map that's on the
7 Forum website, so it's available online
8 for everybody.

9 Paolo, do you recognize this
10 map?

11 A. I --

12 Q. Perhaps it might be better if I
13 gave you control of it. It's an
14 interactive map.

15 MR. BROWN: Can everyone see
16 the screen?

17 THE ARBITRATOR: Yes.

18 MR. BROWN: Bear with us.

19 A. So, as I said, this is a
20 rectangle. If you can start pointing
21 the MCM location, please.

22 Q. Yes.

23 A. Maybe if you can enlarge it a
24 bit. Okay. This is MCM. So that was
25 the former Pal Zileri space.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Q. And its location with the mall
3 is more or less center of the mall?

4 A. Yes. That is the luxury
5 location.

6 Q. And is that good for foot
7 traffic reasons, to be in the center?

8 A. Yes. It's good for traffic.
9 The best part is right in the middle
10 where you see that H.

11 Q. And I'll hover over this?

12 A. That one. That is the best
13 possible location.

14 Q. Fountain of the God's?

15 A. Yes.

16 Q. So it's location is --

17 A. Is good.

18 Q. Is near what stores?

19 A. It's good because. Yesterday, I
20 heard saying that we were across H&M
21 and it was wrong. This is an incorrect
22 statement, because H&M is not right
23 across. The adjacent is Boss.

24 Q. Is that a competitor?

25 A. Slightly lower. Versace, I

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 mall?

3 A. In terms of location, yes.

4 Q. So there was some suggestion in
5 the prior testimony that you turned
6 down an opportunity from Simon or at
7 some point Simon approached you about
8 other space within the mall?

9 A. Right.

10 Q. Was that space that Simon was
11 discussing with you and Forall, was
12 that a similar type of space?

13 A. Absolutely wrong. If you go to
14 the map, you go all the way to the
15 right.

16 Q. Okay. So I'm going to Zoom out
17 and go down all the way over here?

18 A. Keep going all the way to the
19 right. You see where is that white
20 rectangle.

21 Q. Yes. On the spiral escalator?

22 A. Yes. If you go on top -- yes.
23 We are there now. B8T8, this is the
24 space that they offered to us. And you
25 can go around and look, you know, at

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 don't think there's anything you have
3 to say about Versace.

4 Q. Versace is the left here?

5 A. Yes. Then to the right, you
6 have Salvatore Ferragamo.

7 Q. Over across?

8 A. Yes. And then you have Gucci.
9 And you can go around here. You see
10 that Canali here as well in the right.

11 Q. Where is that?

12 A. Lower to the right. Rimowa is
13 part of the LDMH Group. It's the
14 luggage company. La Perla, that is
15 super luxury.

16 So the area is that there is no
17 other area where you can run a
18 successful business in Las Vegas.

19 Q. So even though you didn't select
20 this space because it predated you, it
21 was selected by the doctors?

22 A. I was happy about the space.

23 Q. And did it do what you wanted it
24 to do for the Pal Zileri name and
25 location and foot traffic within this

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 the adjacent tents, and you see that
3 the renters there are totally
4 different. They are not on part with
5 Pal Zileri.

6 Q. So there's an art gallery?

7 A. Correct.

8 Q. It looks like Long Champ?

9 A. Yes. And then there is Chrome
10 Hearts. That is jewelry. So the only
11 one that can be in line with Pal Zileri
12 is Brooks Brothers.

13 Q. And where is that?

14 A. Right there. And I think also
15 the proposal that Simon, Mr. Eads, put
16 together shows that it was tricky or it
17 was not good for us. Why? Because
18 they offered that space with a percent
19 on sales and not with a fixed rent.

20 I have worked with Simon and
21 other landlords over my 25 years, and
22 they offer these terms only when the
23 place doesn't work. Otherwise, they
24 ask you for rent and minimum revenues
25 that you should hit.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 I would like to say that I had
3 several meetings with Simon's people
4 because Mr. Eads was made available
5 once or twice, as far as I remember.

6 The first meeting when they --

7 Q. For time reference, for the
8 record and the arbitrator, this was
9 while -- while Forall was managing the
10 store pursuant to the management
11 agreement?

12 A. If my recollection was correct,
13 this is around July 2015.

14 Q. And at that time you were
15 evaluating all options?

16 A. We were -- again, we rolled out,
17 you know, the flagship in the land. We
18 were looking at the overall map in the
19 states in order to see what would have
20 been our retail expansion plan.

21 But always keeping in mind that
22 at that time and until the time being,
23 until we made a decision, Vegas was our
24 flagship store.

25 Q. At any time during this time,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 the main entrance is in the middle
3 where I showed you before.

4 Q. So the main entrance was over
5 here by --

6 A. Keep going. It's here. Down at
7 the bottom there.

8 Q. Where it's red, is that the main
9 entrance?

10 A. Yes. So look at the difference
11 in -- you know, walking distance
12 between where we were and where they
13 propose us to be.

14 Q. And was there a casino right off
15 of one of these entrances?

16 A. There are casinos everywhere. I
17 don't know. I'm not a gambler, so I
18 don't know.

19 So to that extent, I had several
20 conversations with Simon's people. We
21 had our first meeting in our showroom
22 in New York, because I wanted to show
23 them, you know, the new Pal Zileri,
24 what we were working on in terms of
25 content and so on and so forth.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 did you consider that the Sarah LLC was
3 not responsible for the license
4 agreement and the terms and conditions
5 and obligations that were on there?

6 A. As I said, I'm not a lawyer. If
7 I would have done something to that
8 extent, I would have put that in
9 writing to Sarah. We would have had
10 any conversation on that. If there was
11 a condition --

12 Let me put it this way: Any
13 change on the documentation that we
14 had, would have been done in writing
15 from me -- me, as a CEO of the company,
16 to Sarah with our counsel's help.

17 Q. So just back to the map for a
18 second. This store B8T8, that was the
19 space that Simon was floating to you?

20 A. No.

21 Q. Did that have the same amount
22 of --

23 A. No.

24 Q. -- as the then current store?

25 A. It has less foot traffic because

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Then we met on site at the
3 Forum, and then I had a meeting with
4 them at their office. That, if I
5 remember correctly, 295 Park Avenue.
6 And that I notified them that we were
7 not interested in the space.

8 However, if they had other, let
9 me say, opportunities, other
10 opportunities that we could have been
11 in Vegas or any other location, we had
12 considered.

13 So let me put it also this way:
14 Our approach to the situation was to
15 work together with Simon, the doctor,
16 with everybody. We always tried to
17 cooperate, because at the end of the
18 day, what we care, is the wellness of
19 the building and at that time the Pal
20 Zileri site.

21 We were really in the midst of a
22 huge transformation. So we wanted to
23 make sure every step was taken the
24 right way, but also taking into
25 consideration all the players. It's

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 not just one single entities' interest.

3 Unfortunately, then I discovered
4 Sarah doing all the time, it was just
5 looking, you know, what was their only
6 and sole benefit. In our eyes -- in my
7 eyes, what was important was the
8 flagship, and to have the right
9 flagship in the right place.

10 Q. And every effort was made to
11 make that succeed, was it not, on
12 behalf of Forall?

13 A. Absolutely.

14 Q. The -- I'm going to go a little
15 bit in chronological order. We've
16 heard testimony about an e-mail between
17 the doctors and Alfonso in the fall of
18 2014, did you not?

19 A. Yes.

20 Q. And --

21 A. Are you referring to the e-mail
22 that Mr. Lewis is referring?

23 Q. I'll put it up. But are you --
24 you recall that in September 2014,
25 Alfonso -- Italnord notified Sarah that

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 What -- what was the strategic
3 plan?

4 THE WITNESS: When I came on
5 board, Mr. Farber, the Las Vegas
6 store was a piece of the puzzle,
7 like I said. So we knew that
8 there was a Vegas store. We knew
9 that there was an agreement,
10 license agreement, and a
11 management agreement with --
12 initially with Sarah, that was
13 taken over by Italnord in terms
14 of just managing the store.

15 And then Alfonso notified
16 Sarah that it was not continuing
17 the store at the end of the year.
18 But at the beginning, again, it
19 was one of the many situations
20 that we had to look into and take
21 care. I mean, I -- I came in
22 July, so that was not an
23 immediate priority. The
24 immediate priority in July was to
25 sell the collection, and to go to

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 it didn't -- it didn't want to take
3 over the store?

4 A. Yes. My recollection is --

5 Q. And that was shortly after you
6 had started with Forall?

7 A. I just came on board.

8 Q. So you were getting -- you were
9 becoming emersed in the situation and
10 learning the players?

11 A. Yes.

12 Q. And I'm pulling this up on share
13 screen. This is Exhibit 54. That was
14 previously put up on testimony.

15 THE ARBITRATOR: Before you
16 get there, and again, exclude any
17 communications you had with
18 counsel, but when you first came
19 on board, did ownership tell you
20 what the strategy objective was
21 of Forall regarding the Las Vegas
22 outlet, the store? What was the
23 objective? Was the objective to
24 continue Italnord there, to
25 close, to restore Sarah, to move?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 all the clients, informing them
3 that there was a new owner, there
4 was, what we call, the rebirth of
5 Pal Zileri, with a very detailed,
6 you know, commercial product and
7 marketing plan.

8 That also, you know, Sarah
9 to that extent would have
10 benefit, because the moment that
11 we were elevating our imagine,
12 our brand perception in the
13 market would have benefited the
14 store.

15 I hope this answered your
16 question, sir.

17 THE ARBITRATOR: No. What
18 I'm trying to understand is: Did
19 -- when you were brought on
20 board, you obviously were told,
21 "We have a store, and it's the
22 only one in the United States,
23 except for the showroom. We have
24 a store in Las Vegas," did
25 ownership give you any direction

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 or did they say, "You've got to
3 go there, you've got to check it
4 out, you have to come back with
5 recommendation regarding the
6 strategic plan"?

7 I mean, you come in, you see
8 there's a store -- you read the
9 license agreement for a period of
10 time, but you find out that
11 there's someone else besides
12 Sarah who is running the store.
13 So I'm just trying to understand
14 from the start if you were given
15 any direction or no direction in
16 connection with the strategy from
17 Forall regarding the Las Vegas
18 store?

19 THE WITNESS: I would say
20 the guideline that we were given
21 -- it was that we would have
22 looked at all our stores, and
23 first and foremost, you know,
24 what is the, you know, the look,
25 the image of the store, and what

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 would have been decided at a
3 headquarter level. Because, again,
4 never forget that there is, if I may
5 say, a big difference in management
6 from, you know, a family business and a
7 corporate business as we do.

8 Q. Okay. So you came on board and
9 that was -- that was your task to get a
10 handle on the situation, right?

11 A. Yes.

12 Q. This e-mail which is on the
13 screen, you've heard testimony about
14 this e-mail, correct?

15 A. Yes.

16 Q. And does the prior testimony
17 accurately reflect what was actually
18 being stated here and what was going on
19 at that time?

20 MR. LEWIS: Mr. Brown, can
21 you repeat the exhibit number?

22 THE ARBITRATOR: I couldn't
23 hear you, Mr. Lewis.

24 MR. LEWIS: I was asking the
25 exhibit number.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 is going to be the new store
3 concept. And overtime, every
4 store would have adjusted and
5 aligned to that store concept and
6 that imagine.

7 MR. BROWN: Can I pick it up
8 from here, Mr. Farber?

9 THE ARBITRATOR: Go ahead.

10 Q. You were the CEO of Forall,
11 right?

12 A. Yes.

13 Q. And they -- at that point in
14 time, you weren't replacing Luca Spano,
15 right, he wasn't the CEO, is that right
16 or not?

17 A. Correct.

18 Q. In fact, he wasn't an officer of
19 the company?

20 A. Correct.

21 Q. And it wasn't your job coming on
22 board to develop that strategic plan,
23 analyze Las Vegas, and see what could
24 be done?

25 A. Yes. In sync with what was --

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 MR. BROWN: 50.

3 MR. LEWIS: Say it again.

4 MR. BROWN: 54 and I'm going
5 to withdraw that question. It
6 was not a very good question.

7 Q. Were you copied on an e-mail
8 below here from Alfonso to Dr. Amar
9 Hamad and Bachar Hamad, correct?

10 A. Yes.

11 Q. Did any of these correspondence
12 on here did you reply?

13 A. No. Neither me neither Paolo
14 Viera, who was the corporate CEO.

15 Q. And there was discussion earlier
16 today from Dr. Bachar Hamad stating
17 that he was talking with Luca and Luca
18 agreed to this or something to that
19 effect; do you recall that?

20 A. I don't recall. I don't see
21 Luca in the e-mail.

22 Q. That was my question. Was Luca
23 copied in this e-mail?

24 A. As far as I see in the
25 documents, I don't see Luca in the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 e-mail, and Luca was not an officer.
3 Luca was never an officer, but Luca was
4 very supportive of the business.

5 Q. And do you recall whether
6 Alfonso had already indicated
7 Italnord's decision as to whether to
8 proceed with managing the store beyond
9 the end of the year of 2014?

10 A. I don't remember. But I
11 remember that Alfonso's obligation to
12 run the store was through the end of
13 the year, and in order to assist Sarah,
14 he carried over until -- for two and a
15 half months -- two and a half months
16 until March when we took over.

17 Q. Was --

18 A. Otherwise, Sarah would have had
19 to take the store on January 1st.

20 Q. And you knew that, right, at
21 that time that Sara's was obligated to
22 come back to and run the store at that
23 time?

24 A. I knew that Sarah was obligated
25 to run the store, and then I, you know,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 industry, this minimum purchase
3 concept, is that done for several
4 reasons, but principally so that it
5 ensured there was sufficient inventory
6 in the store to sell?

7 A. The biggest issue that you have
8 in a store is when you lose a sale
9 because you don't have the item.

10 THE ARBITRATOR: Is when you
11 what?

12 THE WITNESS: Lose a sale
13 because you don't have that item
14 available. I mean, there's going
15 to be a moment in time where you
16 break your stock because you
17 don't have your size run
18 complete, but that is --
19 should be towards the end of the
20 season.

21 Also, consider that store
22 need to have new merchandise,
23 fresh merchandise all the time to
24 the extent that now the business
25 is evolving in having deliveries

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 started conversations with the doctors
3 that we may have taken over because
4 what was omitted, you know, in the
5 previous testimony is the amount of
6 calls that I got from those doctors
7 that they were very good and, you know,
8 playing tag and, you know, sorry, tag
9 teaming in making one phone call and
10 then it was the other that was very
11 confusing, especially for a guy like me
12 who is new to the business, and begging
13 to run the store.

14 But, again, I was very clear
15 from day one, we do -- as doctor said
16 yesterday, it's going to be a test.
17 It's going to be a trial to see how it
18 works. Also, because before -- and
19 that probably was, you know, when it
20 was delayed through mid March because
21 an operation like this have to be
22 approved by the corporate board of
23 directors.

24 Q. I want to take a step back and
25 get back to this point. But in the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 every month.

3 Because you don't want a
4 client coming in and saying, "Oh,
5 I saw this already," and you need
6 to have enough amount of
7 merchandise that you can fulfill
8 the sales. And to that extent,
9 also, you have the seasonal
10 merchandise. And it is what we
11 call "the ladder of the stock,"
12 that is like 10, 15 percent of
13 the business. That is, let me
14 say, the fitting of loose suits.
15 That is not seasonal. You have
16 that all the time.

17 And on top of that for the
18 more prestigious client, you have
19 the made-to-measure. That you
20 come in, they take your
21 measurement, they select the
22 fabric that they want. We have
23 bunches, you know, with the
24 fabric they select, and it's made
25 custom made for the client.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Q. And that was a service that was
3 offered at the store?

4 A. Absolutely.

5 Q. And you heard doctor's testimony
6 about late delivery and late product
7 and the lead times that you couldn't
8 get the inventory unless it was ordered
9 six months.

10 So tell me a little bit about
11 that because, especially in the Las
12 Vegas market, when do you want to get
13 the inventory into the store, and how
14 much, how much lead time do you need to
15 actually get it from the manufacturing
16 shop?

17 A. I want to divide my answer to
18 two parts. The first part is Vegas,
19 delivery to Vegas. Being on the
20 wholesale side of the business, I've
21 dealt with Sarah and other clients that
22 they have stores in Vegas.

23 In Vegas, you don't want
24 merchandise in July, winter
25 merchandise. It ain't going to sell.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 January 1st to end of March, April, 8
3 or 15th, the latest.

4 Q. And so it's a rolling delivery?

5 A. Exactly.

6 Q. It's not just you get all the
7 inventory at once?

8 A. It's also from a production
9 standpoint.

10 Q. And that's just standard?

11 A. That is standard. The other
12 thing is when we talk about production,
13 as you said, you know, it takes six
14 months, four to six months, you know,
15 depending if you talking about suit or
16 a shirt.

17 The rule of thumb is that it
18 takes 90 days to take the fabric and
19 about two months to work production, so
20 it's five months. Consider that when
21 it was stated that Pal Zileri did not
22 have enough time to produce for the
23 store, that to me -- I disagree with
24 that for two reasons. One, is because
25 we have six months, as I said, you

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 It's hundred something degrees outside,
3 and the foot traffic is low. You want
4 to start receiving merchandise in
5 September, but the goal is to have
6 enough goods to be, let me say, fully
7 loaded by beginning of November,
8 because then you get into Thanksgiving
9 and then all the holidays.

10 So the comment that one of the
11 doctors made about being late since we
12 delivered in October, if I'm not
13 mistaken, it is correct to the general
14 business. It's not accurate when you
15 talk about Vegas.

16 Q. And what about spring season?
17 When did the store, you know, when
18 should they have the goods for anything
19 else?

20 A. Spring season, you know, it
21 start -- in a store like Vegas you have
22 spring a lot because of the weather,
23 but usually the spring season start
24 with shoes in mid/late, and the real
25 spring, summer merchandise is shipped

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 know, in five months we could do it.

3 Second, the Pal Zileri Vegas
4 store was considered the flagship
5 store, and let's say part of the Pal
6 Zileri retail, so we could have been
7 able to supply merchandise having it
8 from the production all the other Pal
9 Zileri mono-brand store.

10 And also when you buy from those
11 stores, you buy, you know, extra
12 product. You know, it's not that you
13 need 92 meters .5 or more of fabric and
14 you buy that, you have to buy distance.
15 So maybe you have to buy 120. So you
16 always have a little overage and then
17 sometimes you have some shortage
18 because if you need just a little more
19 because you don't buy the whole piece
20 because not too much fabric left over,
21 but we were planning on possibility to
22 supply the store enough merchandise as
23 needed.

24 Q. And your answer there, you're
25 responding to prior testimony by the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 doctors where they claimed that it was
3 impossible to get that product, right?

4 A. Incorrect.

5 Q. You didn't agree with that?

6 A. No. For the timing that I
7 explained. And, again, if there's a
8 rush, also, you can cut that.

9 Q. And when you provided the notice
10 that we looked at earlier today from
11 January -- from February 25, 2015, for
12 the doctors requesting for more time,
13 was that enough -- was that sufficient
14 notice for the doctors to get inventory
15 on-hand to take back the store in
16 September?

17 A. Absolutely. Because we gave
18 them, correct me if I'm wrong, six
19 months, and in six months it was plenty
20 of time to produce merchandise.

21 And, also, never forget that
22 headquarters is also keeping some
23 inventory for emergency or hopefully,
24 you know, an unexpected performance of
25 any store.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 right?

3 A. Yes.

4 Q. And do you recall if at prior to
5 that time Sarah had signed a document
6 with Simon saying Simon could go find a
7 replacement tenant and that was a
8 problem for Forall at that point?

9 MR. LEWIS: Objection.

10 THE ARBITRATOR: What's the
11 objection, Mr. Lewis?

12 MR. LEWIS: Mr.

13 Torello-Viera has just recently
14 testified that he's not aware of
15 such an agreement, and Mr. Brown
16 is asking -- but, again, Mr.
17 Torello-Viera stated he wasn't
18 aware of such --

19 THE ARBITRATOR: Why don't
20 you rephrase. You can handle the
21 objection easily.

22 MR. BROWN: I'm entitled to
23 refresh this witness's
24 recollection. He was --

25 THE ARBITRATOR: Mr. Brown,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 Q. Okay. Thank you.

3 A. And on top of it, think about
4 the importance of a flagship store. We
5 would have canceled pieces from other
6 clients penalizing them in order to do
7 a favor to a store that has our name
8 brand at the entrance.

9 Q. When -- did there come a time
10 shortly after this exchange of e-mails
11 which was dated February 16, 2014, that
12 you learned that the doctors had signed
13 a letter agreement with Simon to find a
14 replacement tenant?

15 A. No, I do not.

16 Q. You don't recall that?

17 A. No, I don't recall.

18 THE ARBITRATOR: Are we
19 ready, Mr. Brown.

20 MR. BROWN: Yes. I'm just
21 pulling up an exhibit.

22 Q. There came a time that Forall
23 had discussions with Sarah about Forall
24 taking over the management of the store
25 pursuant to a management agreement,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 I agree, except you haven't done
3 that with this question. That's
4 why I said rephrase if you so
5 chose. Up to you.

6 Q. Mr. Paolo, I'm showing you a
7 document that's been introduced into
8 evidence in this case. It's a letter
9 agreement dated January 28, 2015,
10 between the Forum Shops and Sarah LLC
11 and I ask you to read this?

12 MR. SHAH: Mr. Brown, could
13 you clarify the exhibit number?

14 MR. BROWN: I don't know it
15 offhand. I'd have to search for
16 it. The withdrawal letter
17 between Simon and Sarah. I'm
18 showing it to him to refresh his
19 recollection.

20 Q. Having looked at this document,
21 does this refresh your recollection
22 about a certain letter agreement
23 between Simon and Sarah that Sarah was
24 looking to turn back the store?

25 A. I'm not sure.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Q. Did you -- did Forall ultimately
3 enter into a management agreement to
4 manage the store for a term for Sarah?

5 A. Yes. For 18 months.

6 Q. And when was that, about?

7 A. That was -- we took over the
8 store March -- around March 15, 2015.

9 Q. Okay. And that was pursuant to
10 a written management agreement; is that
11 right?

12 A. Yes.

13 Q. Did you seek to -- so during
14 that period of time that you operated
15 the store, were you analyzing -- strike
16 that.

17 Had you reviewed the management
18 agreement prior to executing it on
19 behalf of Forall?

20 A. Yes.

21 Q. And you signed it as CEO?

22 A. Yes, I did.

23 Q. And you understood it was for a
24 term only?

25 A. It was for up to 18 months, and

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 elect to take over the store itself
3 under the management agreement?

4 A. To me it was their obligation.

5 Q. And did anyone at Forall ever
6 reduce or otherwise eliminate the
7 minimum purchase agreement with Sarah?

8 A. Not that I'm aware of.

9 THE ARBITRATOR:

10 Mr. Torello-Viera, you testified
11 earlier that, you know, you were
12 brought in after changing
13 ownership, and you described
14 something of the entities that
15 were the new ownership. Do you
16 know if Sarah and its principals
17 were advised of the change of
18 ownership?

19 THE WITNESS: I think so.

20 THE ARBITRATOR: What's the
21 basis of that response?

22 THE WITNESS: I think so
23 because based on the relationship
24 they had with Luca and Mr.

25 Baritza, they would have

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 it was only related to the management
3 of the store. It didn't change any
4 other existing agreement between Forall
5 and Sarah.

6 Q. And you understood that all
7 rights were reserved under the license
8 agreement?

9 A. Absolutely. Absolutely because
10 it was spelled out, if my recollection
11 is correct, in this agreement, and any
12 official correspondence that we had
13 between the parties.

14 Q. And you had an understanding at
15 the time that if you did not elect to
16 continue to the management agreement,
17 that you would turn the store back over
18 to Sarah to run?

19 A. That was my understanding. And
20 I think it's spelled out in the
21 management agreement.

22 Q. And did you have any -- did
23 Forall have an expectation that Simon
24 -- that Sarah would take back the store
25 in September of 2015 if Forall did not

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 informed. Also, the news was
3 broadcasted, it was -- I would
4 assume, and I may be wrong, that
5 they were aware of the changes.

6 THE ARBITRATOR: Okay. Do
7 you have any specific knowledge
8 that they were told, other than
9 your assumptions, given the
10 relationship?

11 THE WITNESS: No, I don't.

12 THE ARBITRATOR: Did you,
13 yourself, ever discuss this with
14 the doctors or one of them?

15 THE WITNESS: I was
16 introduced later on to the
17 doctors to talk about the
18 management of the store when
19 Italnord decided, you know, not
20 to continue.

21 THE ARBITRATOR: Right. I'm
22 not talking about that. I just
23 want to know if when you were
24 introduced to them, did you ever
25 discuss that, you know, part of

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 the reason you were brought on
3 board is that there was a change
4 of ownership who had retained you
5 as the CEO of Forall USA.

6 THE WITNESS: Yes. Because
7 I came on board as the CEO of the
8 Americas appointed by the new
9 owners.

10 Q. So you did tell them at that
11 time?

12 A. Yes. When I introduced myself.

13 THE ARBITRATOR: Okay. Did
14 you -- did you discuss with
15 them the way you testified today
16 who the new owner were and -- and
17 --

18 THE WITNESS: Absolutely.
19 Because --

20 THE ARBITRATOR: That's what
21 I wanted to know. Okay. I was
22 not aware of that. So you've
23 answered my question.

24 Go ahead, Mr. Brown.

25 Q. This minimum purchase concept in

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 a licensing agreement, such as the one
3 specific to Sarah and Forall, that
4 minimum purchase would allow Forall to
5 recoup some of its investment into the
6 Pal Zileri store, right?

7 A. Absolutely.

8 Q. And it was a commitment that it
9 sought at the outset of the
10 negotiations so that it could have
11 some -- you know, it would be able to
12 have a longstanding relationship with
13 Sarah and it was to be profitable going
14 forward, right?

15 MR. LEWIS: Objection.

16 MR. BROWN: You didn't like
17 that question?

18 THE ARBITRATOR: We're
19 getting some feedback again. I
20 think it's from Mr. Lewis because
21 it sounds like his kind of
22 feedback.

23 MR. SHAH: Your audio is
24 messed up again.

25 MR. LEWIS: (Inaudible).

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR: Whatever --
3 okay.

4 MR. SHAH: Mr. Farber, we've
5 had these issues with other
6 hearings before. It's our firm
7 laptop, so.

8 THE ARBITRATOR: You're
9 blaming your firm, Mr. Shah. I
10 don't know. Should I tell
11 Mr. Lewis about that?

12 MR. LEWIS: Is that better?

13 THE ARBITRATOR: I think
14 it's not actually.

15 MR. LEWIS: (Inaudible).

16 THE ARBITRATOR: Mr. Brown,
17 how much more do you have of the
18 witness? Can you hear me,
19 Mr. Brown? I guess not. Guys,
20 we did pretty well all morning
21 and now everything is kind of
22 getting messed up.

23 MR. BROWN: I'm sorry. We
24 get disconnected on the audio.

25 THE ARBITRATOR: Mr. Lewis,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 are you back. Can we hear you?

3 MR. BROWN: I'm going
4 withdraw that last question. Is
5 it too close to lunch to call it?

6 THE ARBITRATOR: Well, it's
7 about 10 to 1:00. How much more
8 do you have of the witness, do
9 you have, Mr. Brown, roughly? I
10 can't hear you now.

11 MR. BROWN: Can you hear me?

12 MR. LEWIS: Can you all hear
13 me? This is Rod?

14 THE ARBITRATOR: Yes. Now
15 it seems to be working well.
16 Mr. Brown, how much more do you
17 have of the witness?

18 MR. BROWN: We're going to
19 not finish with him before lunch
20 because Vinny has got some
21 questions as well.

22 THE ARBITRATOR: I
23 understand. So the two of you
24 together, give me a handle. I
25 just want to chart out the rest

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 of today, and I'm not going to
3 hold you to it.

4 MR. BROWN: I think
5 45 minutes.

6 THE ARBITRATOR: And, Mr.
7 Lewis, any notion as to how long
8 your cross is going to be?

9 MR. LEWIS: Maybe a half
10 hour, an hour, 45 minutes.

11 THE ARBITRATOR: Okay. And
12 who is going to be our next
13 witness, Mr. Brown?

14 MR. BROWN: Ms. Settimi.

15 THE ARBITRATOR: All right.
16 Let's return at 2:00, everyone.

17 (Whereupon, a lunch break
18 was taken.)

19 THE ARBITRATOR: Mr. Brown,
20 why don't you proceed?

21 MR. BROWN: Paolo wanted to
22 say the Italian lunch would have
23 been three hours and a glass of
24 wine.

25 THE ARBITRATOR: All right.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 principally about potentially coming in
3 to manage the store on their behalf?

4 A. Yes. Just manage the store for
5 18 months.

6 Q. And is that more or less what
7 this letter of intent, which is -- it
8 said, "It's a nonbinding letter
9 intent," sets forth?

10 A. Yes. It was the initial
11 document, the initial conversation.
12 But always, you know, stating that none
13 of the obligation in place could have
14 changed.

15 Q. And at this time you had spoken
16 with the doctors at some length?

17 A. Absolutely.

18 Q. And had heard Mr. Farber's
19 inquiry before. You had advised them
20 as to new ownership and strategic
21 thinking of the company?

22 A. Yes. In fact, we thought of
23 taking over, managing the store for a
24 limited period of time, as a trial, to
25 use words that have been used a lot,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Well, we're working differently,
3 so it's okay. Let's proceed.

4 MR. BROWN: I'm going to go
5 right to Exhibit 114.

6 Q. Paolo, can you see this?

7 A. Yes.

8 Q. And I'm just going to scroll
9 through a few pages here. It's a fax
10 copy of a document. It has your
11 signature block on it. Do you recall
12 this document?

13 A. If I'm not mistaken, this is the
14 document that we signed with the letter
15 of intent when we were in conversation
16 with Sarah to take over the management
17 of the store for 18 months when
18 Italnord decided not to go forward.

19 Q. Okay. So at this time, setting
20 the stage, Italnord was still running
21 the store, but it indicated it would
22 not be going forward?

23 A. Yes.

24 Q. And you were talking with Sarah
25 and the doctors, Bachar Hamad,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 and I ran it to headquarters in order
3 to get an approval.

4 Q. And at any point in time, did
5 you tell the doctors or anyone at Sarah
6 that, "Don't worry. The license
7 agreement is going to go away. It's
8 not something you're going to have to
9 live up to after this trial period"?

10 A. I think that all the documents
11 we have and that we signed spells out
12 clearly there were no changes.

13 THE ARBITRATOR: Let's --
14 Mr. Torello-Viera, let's focus on
15 the question. He didn't ask
16 about what the documents say. He
17 asked if you had any discussion.

18 And let me ask you this,
19 scroll down the date of this,
20 please.

21 MR. BROWN: I'll give you
22 the fax - how about the date it
23 was faxed back. That should be
24 on the top here. December 17,
25 2014.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 THE ARBITRATOR: So,
 3 Mr. Torello-Viera, as of this
 4 date, could you tell me -- did
 5 you ever have any conversation
 6 with either of doctors, Hamad,
 7 regarding the minimum purchase
 8 requirement that was in the
 9 license agreement?

10 THE WITNESS: No. I had
 11 conversation with the doctor
 12 talking about exclusively the
 13 management of the store, nothing
 14 else.

15 THE ARBITRATOR: Okay. So
 16 as of this day, say mid December
 17 of '14, when this nonbinding
 18 letter of intent was signed, you
 19 never discussed with either of
 20 them the minimum purchase
 21 requirement that was in the
 22 license agreement; is that
 23 correct?

24 THE WITNESS: Yes. You're
 25 correct, sir.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 subsidiary, sometimes referred to
 3 herein as Forall, shall be the manager
 4 of the Pal Zileri store located at the
 5 Forum Shops Caesars to Las Vegas,
 6 herein referred to as the business,"
 7 right?

8 A. Yes.

9 Q. Was it clear at that time in
 10 your discussions with doctors that they
 11 knew it was for a term period of
 12 management, and that they were still
 13 responsible as owners of the store?

14 MR. LEWIS: Objection.

15 THE ARBITRATOR: I couldn't
 16 hear you. Say it again.

17 MR. LEWIS: My objection,
 18 Mr. Farber, is that Mr.
 19 Torello-Viera cannot testify as
 20 to what Sarah knew.

21 THE ARBITRATOR: To the
 22 contrary. He can if someone from
 23 Sarah told him, and if he had
 24 conversations with them, so he
 25 might know. He might not know.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 THE ARBITRATOR: Okay. Go
 3 ahead, Counselor.

4 Q. This nonbinding letter
 5 ultimately formed -- a binding
 6 management agreement was executed by
 7 and between the parties, correct?

8 A. Correct.

9 Q. And that document has been
 10 introduced in evidence and you've seen
 11 it on the screen and otherwise?

12 A. Yes.

13 Q. And it had your signature to it?

14 A. Yes.

15 Q. And you signed it on behalf of
 16 Forall?

17 A. As an officer of Forall USA.

18 Q. I'm just going to remind you for
 19 purposes of the report's sanity and the
 20 transcript, just wait for my answer
 21 [sic] to end, Rodney might object, and
 22 we're just not talking over each other.
 23 That's all.

24 This letter states, "Management,
 25 Forall USA and or its affiliate and/or

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 If he does know, then it's --
 3 it's up to Mr. Brown as to
 4 whether he wants to ask him the
 5 source of the information. If
 6 not, on cross you can ask the
 7 source. If he doesn't know.

8 That's the end of it. Overruled.

9 You can answer.

10 MR. BROWN: Maggie, can you
 11 read that one back?

12 (Whereupon, the record was
 13 read by the reporter.)

14 THE ARBITRATOR: You can
 15 answer it.

16 A. Yes. My conversation was only
 17 related in temporary management of the
 18 store, nothing else.

19 Q. This -- there's a section here
 20 that says, "Landlord consent," in the
 21 letter of intent, and the second
 22 sentence says, "Sarah shall obtain and
 23 ensure that the landlord will waive any
 24 rights with respect to the October 23rd
 25 of 2014 letter agreement between Sarah

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 and the landlord. Sarah shall
3 indemnify and hold Forall harmless from
4 any loss or liability incurred by
5 Forall that arises from the October 23,
6 2014, letter agreement." Do you see
7 that?

8 A. Yes.

9 Q. Having seen that, this language
10 in this letter of intent, does that
11 refresh your recollection as to what
12 was transpiring with that letter
13 agreement with Simon and Sarah?

14 A. It's getting a little more less
15 vague to the extent that while we were
16 in the middle of the conversation with
17 the doctor, in between the letter of
18 intent and the management agreement, we
19 found out, and I don't remember how,
20 that they already gave -- they
21 authorized -- Sarah authorized Simon to
22 look for a new tenant.

23 And as you remember, I mean, I
24 was pretty upset about that, and we
25 asked for his consent to be retrieved

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 you. You're talking about the
3 Forall management agreement,
4 right?

5 MR. BROWN: Yes, sir.

6 A. Which management agreement are
7 you talking about?

8 Q. We'll look at it on the screen.
9 This is a copy of the Forall, Sarah
10 management agreement, okay, and I want
11 you to -- this is exhibit --

12 MR. BROWN: Jump in guys if
13 you have it before I do. Looks
14 like Exhibit Number 7 -- no,
15 Number 8.

16 Q. Paolo, have you seen this
17 document before? And I'll scroll
18 through. It's a 10 pager.

19 A. Yes.

20 Q. Okay. And did this document
21 contain the terms by which Forall
22 agreed to take over the management of
23 the Pal Zileri store in Las Vegas.

24 A. This should be the document that
25 ruled the management of the store by

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 in order that we can continue, and also
3 because it was 100 percent in breach of
4 the agreement that we had in place with
5 Sarah.

6 Q. And you, in your letter of
7 intent agreement, actually required
8 them to get that rescinded, correct?

9 A. Yes.

10 Q. And you told them that -- do you
11 recall telling them at the time that
12 they were in breach of the license
13 agreement if they turned back the
14 store?

15 A. Absolutely. Because it required
16 our consent.

17 Q. Okay. I don't have any further
18 questions about that.

19 MR. BROWN: Just for the
20 purposes of being thorough, I'm
21 just going to show him a copy of
22 the management agreement, unless
23 arbitrator says that horse has
24 been beaten enough.

25 THE ARBITRATOR: It's up to

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 Forall for 18 months.

3 Q. And is that your signature on
4 the last page?

5 A. Yes, it is.

6 Q. And there was some discussion by
7 the -- and testimony by the doctors
8 saying that they never came back to the
9 store after September '11, they didn't
10 have any responsibility -- sorry --
11 that they didn't -- after September
12 '13, when Italnord took over management
13 that they never came back and operated
14 the store; do you recall that
15 testimony?

16 A. Yes.

17 Q. Do you recall, and I'm looking
18 at Provision 2.2, do you recall
19 negotiating when Forall would actually
20 start the management of the store?

21 A. Yes.

22 Q. And didn't you go to great
23 lengths to accommodate the doctors in
24 that regard that you started management
25 of the store and transitioned for their

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 benefit?

3 A. Yes. The extent that Italnord's
4 engagement or management of the store
5 was till the end of December. Together
6 with Alfonso, that was very
7 cooperative, we facilitated the
8 transition, keeping him running the
9 store until mid March when we took over
10 because, otherwise, according to the
11 agreement in place, Sarah, on
12 January 1st, would have had to run the
13 store taking it over again, either for
14 the whole time or until Forall would
15 have stepped in and managed the store.

16 Q. And Simon -- and Sarah had
17 extensive liability as it related to
18 Simon and the lease to keep that store
19 open, right?

20 A. One of the points that is very
21 clear in the Simon lease in general is
22 --

23 THE ARBITRATOR: Let's try
24 to stick with the question. The
25 question was whether or not you

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 knew that Sarah had significant
3 liability to Simon under its
4 lease.

5 A. Yeah. Because the lease states
6 that you have to run business according
7 to the mall hours of operation.

8 Q. Okay.

9 A. You have very limited time just
10 for inventory.

11 THE ARBITRATOR: We've got
12 the answer. Let's go to the next
13 question.

14 Q. During that period of time, did
15 you understand that Italnord was
16 managing the store, but, essentially,
17 as the agent for Sarah?

18 A. Yes.

19 Q. I'm going back to this exhibit,
20 which I think is best found at
21 Exhibit 302. You know what, I'm --
22 well, let's go to 302. Paolo, do you
23 recall this letter?

24 A. Yes, I do.

25 Q. And did you send it to Sarah

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 LLC?

3 A. Yes, I did.

4 Q. In care of Dr. Bachar?

5 A. Yes.

6 Q. And do you recall sending it by
7 e-mail?

8 A. We anticipated the letter via
9 e-mail as a courtesy and then as
10 registered mail.

11 Q. Sorry. I'm pretty frozen here.
12 So I'm not able to scroll down.

13 At this time or at any time
14 after February 25, 2016, and July 1,
15 2016, did you have response back from
16 Sarah?

17 A. No.

18 Q. And is it fair to say as of
19 February 25, 2016, Forall wasn't --
20 hadn't made a final determination as to
21 whether to proceed with taking over the
22 store or turning management back over
23 to Sarah?

24 A. Correct. This is the reason why
25 we asked for the 60 days extension.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR:

3 Mr. Torello-Viera, who at that
4 time was actually, day-to-day, in
5 the store managing it?

6 THE WITNESS: We had -- I
7 think, if I remember correctly,
8 it was a staff of eight people.
9 We had a store manager and
10 assistant store manager, sales
11 people and a tailor.

12 THE ARBITRATOR: What was
13 the name of the store manager; do
14 you remember?

15 THE WITNESS: Of the store
16 manager?

17 THE ARBITRATOR: Who was
18 actually running the store at
19 that time. Do you recall the
20 name?

21 THE WITNESS: I know where
22 he went, but I don't remember the
23 name.

24 THE ARBITRATOR: Did you
25 ever hear that anyone at the

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 store was unwilling to take phone
3 calls from either of the doctors
4 or owners of Sarah for any reason
5 at all?

6 THE WITNESS: Technically,
7 my team was not at ease when the
8 doctors were calling, because the
9 tone of the conversation was
10 always pretty aggressive, to the
11 point that when they were calling
12 at the office where I was
13 located, the girls were telling
14 me to answer the phone because
15 they were the doctors.

16 THE ARBITRATOR: So it could
17 well be that if one of the
18 doctors Hamad called the store
19 that there would have been a
20 reluctance to speak to them; is
21 that correct?

22 MR. BROWN: I think that's
23 calling for --

24 MR. LEWIS: I think that's a
25 question Mr. Farber has asked to

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 have the customer wait.

3 I can also tell that I'm
4 instructed, you know, the
5 personnel at the store that any
6 call that was not just pertaining
7 to a sale, to have it delivered
8 -- forwarded to my office. And
9 in case of, you know, business to
10 have it -- address it to me
11 directly.

12 THE ARBITRATOR: Okay. And
13 did you have any understanding
14 with either of the Dr. Hamads
15 that calls regarding negotiation
16 of the Forall Sarah management
17 agreement or regarding the lease
18 with Simon, anything like that,
19 would not go to the store, but
20 rather would go to you?

21 THE WITNESS: It was clear
22 that I was the only person within
23 the organization that was an
24 executive, a manager together
25 with signatory power with Palma

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 the witness, Mr. Brown.

3 THE ARBITRATOR: I don't
4 mind hearing if there's an issue,
5 but I think the witness can
6 answer the question.

7 MR. BROWN: I do have an
8 issue with that question, Mr.
9 Farber, because you're asking for
10 a hypothetical.

11 THE ARBITRATOR: I'm not
12 asking for any hypothetical at
13 all.

14 I'm asking for your
15 knowledge, Mr. Torello-Viera. Do
16 you know if it happened that
17 there was a state of events at
18 the store that when either
19 Dr. Hamad called, there was a
20 reluctance to take the call?

21 THE WITNESS: I have to say
22 that any call at the store was
23 answered because that was the
24 rule that, you know, we needed to
25 pick up the phone ASAP, and not

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 Settimi. Nobody else could make
3 any agreement whatsoever for the
4 company. I was the only one.

5 THE ARBITRATOR: Okay. Go
6 ahead, Mr. Brown.

7 MR. BROWN: Thank you,
8 Mr. Farber. I have frozen.
9 Let's see.

10 Q. I'm going to share my screen,
11 and I want you to look at this e-mail.

12 MR. BROWN: This is
13 Exhibit 300. Okay.

14 Q. And, Paolo, was I representing
15 Forall at this time, February of 2015?

16 A. Yes.

17 Q. And was I taking my instructions
18 from you?

19 A. Yes.

20 Q. And do you recall having looked
21 at this -- do you recall who David
22 Hochman was?

23 A. David Hochman was your
24 counterpart at Sarah, if I'm not
25 mistaken.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Q. And so -- please read this
3 e-mail?

4 MR. LEWIS: Can you enlarge
5 the text?

6 MR. BROWN: Let me just pull
7 it down from the system. I
8 apologize. This should help.

9 A. Yes. This is your letter asking
10 for the 60 days extension.

11 Q. And the date of this e-mail is
12 February 23rd. Going back to that
13 prior agreement that was February 25th,
14 that letter that you sent?

15 A. Yes.

16 Q. And do you recall -- is this
17 consistent with your recollection that
18 we -- you made multiple attempts
19 with various parties that represented
20 Sarah at this time?

21 A. Yes. And I recall his office
22 calling me before almost every day
23 asking to take over the store.

24 Q. Okay. But how does that tie
25 into this?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 exhibit in this testimony?

3 A. Yes, I think so.

4 Q. I'll pull it up.

5 A. Yeah.

6 Q. And was that the letter that you
7 advised him of the \$900,000
8 requirement?

9 A. If you can pull that up, I think
10 so. I would like to see it.

11 Q. All right. And this is the
12 letter on Pal Zileri letterhead. It
13 says -- this is Exhibit 184. Okay.
14 Paolo, could you just take a moment and
15 read this letter to yourself?

16 A. Yes.

17 Q. And is this a letter you sent
18 back in March of 2016?

19 A. Correct.

20 Q. And in this letter you've
21 reminded the doctor of the minimum
22 purchase requirement, right?

23 A. Yes.

24 Q. And that the license agreement
25 was continuing?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 A. Sorry. I missed it. Yes.

3 You're correct.

4 Q. Okay.

5 A. I went one year after. I went
6 to 2016.

7 Q. Let's clarify what you're
8 talking about, and just stick with my
9 questions.

10 Let's clarify for the record,
11 the doctors -- did they ever respond to
12 your request for an extension of time
13 on the management agreement notice?

14 A. No.

15 Q. And do you know if counsel ever
16 responded in any substance?

17 A. Not to me.

18 Q. And then, was -- did you send a
19 follow-up communication after
20 February 29th to Sarah about their
21 termination of the management agreement
22 and the requirement to take over the
23 operation of the store?

24 A. I think so.

25 Q. And do you recall seeing that

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 A. Yes.

3 Q. And you also said that, "Please
4 contact me to discuss the store
5 inventory, fall, winter purchasing,
6 employee matters, and transitioning
7 operations"?

8 A. Yes.

9 Q. Do you recall stating that?

10 A. Say it again.

11 Q. Strike that.

12 You also say, "We wish to make
13 this as smooth as possible for Sarah"?

14 A. Yes.

15 Q. And that was true when you wrote
16 it, right?

17 A. Yes.

18 Q. And you have an all rights are
19 reserved in this letter?

20 A. Yes.

21 Q. Did you ever receive a response
22 from Sarah in connection with this
23 letter?

24 A. No.

25 Q. Did anyone contact you about

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 transitioning the store from Sarah?

3 A. No.

4 Q. Did they contact you about
5 getting product in place for the
6 opening in September?

7 A. No.

8 Q. How about employee matters?

9 A. No.

10 Q. Was this enough time, March 9,
11 2016, would that have been enough time
12 for Sarah to have stocked up and gotten
13 appropriate product in the store for a
14 September transition?

15 A. Absolutely.

16 Q. And was Forall committed to do
17 that?

18 A. We would have done that with
19 pleasure because, again, never forget
20 that the store bears the Pal Zileri
21 brand name.

22 Q. I have another exhibit to get
23 to.

24 MR. BROWN: I'm going to go
25 to Exhibit 242, everyone. And

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 Q. And it was an order from a
3 court?

4 A. Yes.

5 Q. And where were you when you
6 learned of that?

7 A. I was in Vegas, if I'm not
8 mistaken.

9 Q. Were you in Vegas or you had --
10 or you had traveled out there ahead?

11 A. I don't understand the
12 difference.

13 Q. Were you in Vegas at that point
14 in time?

15 A. If I remember correctly, yes.

16 MR. BROWN: Mr. Farber, I'm
17 going to transition to Mr. Crowe.

18 THE ARBITRATOR: Okay.
19 Thank you very much.

20 MR. LEWIS: Mr. Farber,
21 housekeeping item, please.
22 Earlier, Mr. Brown said Mr. Crowe
23 was going to cover damages. To
24 the extent Mr. Crowe is going to
25 cover damages, I would like to

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 I'll share my screen. Okay.

3 Q. This is a little hard to see.
4 Let me scroll.

5 Paolo take a moment to just look
6 at this letter. You're CC'd on it.

7 A. Okay.

8 Q. And is this a letter you
9 received in or around June 1, 2016,
10 from my office.

11 A. Yes.

12 Q. And is this consistent with your
13 recollection that multiple attempts
14 were made to have Sarah respond and
15 otherwise assume its contractual
16 obligations under the license
17 agreement?

18 A. Yes. Because we haven't
19 received an answer to the previous
20 letters that we sent.

21 Q. And so did there come a time in
22 or around August 1, 2016, that you --
23 that Forall was served an eviction
24 notice?

25 A. Yes.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 allow our damages expert to join
3 the Zoom call.

4 THE ARBITRATOR: Mr. Crowe,
5 are you going to be handling
6 damages now?

7 MR. CROWE: Yeah. I'm going
8 to discuss what transpired in Las
9 Vegas, and how that impacted the
10 damage to my client.

11 THE ARBITRATOR: Okay. Well
12 I've already ruled on your
13 request, so you can go right
14 ahead and ask for your expert to
15 -- I think it's Mr. Salsbery; is
16 that right?

17 MR. LEWIS: That's correct.

18 THE ARBITRATOR: Yes. To
19 join our meeting. And, of
20 course, if Mr. Flaherty wants to
21 join, he's welcome to join as
22 well.

23 MR. BROWN: I don't know
24 that's -- look, I know you made
25 your ruling, and I don't want to

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 be yelling into the wind, but
3 we're still on direct with this
4 witness. I don't think it's an
5 appropriate time to bring in the
6 damages expert. What the topic
7 was when --

8 THE ARBITRATOR: Mr. Brown,
9 you're right. No point yelling
10 into the wind.

11 MR. BROWN: Okay. Thank
12 you.

13 Paolo is asking for a break.
14 I think he has to use the mens'
15 room. Can we do that?

16 THE ARBITRATOR: Sure.
17 Let's take five. We'll take five
18 minutes. All right.

19 (Whereupon, a recess was
20 taken at this time.)

21 THE ARBITRATOR: Okay.
22 Mr. Crowe, why don't you proceed,
23 please.

24 MR. CROWE: Thank you,
25 Mr. Farber.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 A. I traveled to Las Vegas multiple
3 times, because, first of all, you know,
4 Mr. Brown --

5 THE ARBITRATOR: Hang on.
6 The question simply was, "Did you
7 travel to Las Vegas?" The answer
8 was, "Yes." Next question.

9 Q. Do you recall approximately when
10 you went out to Las Vegas in response
11 to this notice?

12 A. If my recollection is correct I
13 went there twice, and the last time was
14 at the end of the month when we had no
15 option then vacating the store.

16 Q. And did you bring out another
17 employee with you to help?

18 A. One colleague one time and the
19 other colleague the other time.

20 Q. And what was the purpose for
21 your visit?

22 A. The purpose of the visit -- the
23 first one, you know, should have been
24 to run the business, but it was to take
25 care of the unexpected and unpleasant

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2
3 DIRECT-EXAMINATION
4 BY MR. CROWE:

5 Q. Sir, did there come a time in
6 July of 2016 that you learned that you
7 had to close the store in Las Vegas?

8 A. Yes.

9 Q. How did that come to your
10 attention?

11 A. We received a letter at the
12 beginning of July, if I'm not mistaken,
13 July 6th, that our lease -- Sarah's
14 lease was terminated by the end of the
15 month, and we had to vacate the store.

16 Q. Who was the letter from?

17 A. From the lawyer, if I'm not
18 mistaken.

19 Q. Was that Simon's lawyer?

20 A. Simon's lawyer.

21 Q. And what did you do in response
22 to that notification?

23 A. I called Stephen Brown
24 immediately.

25 Q. And did you travel to Las Vegas?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 situation.

3 Q. What did you do to -- what steps
4 did you take to close this business on
5 this short notice?

6 A. Purely in regard to closing
7 business, was basically packing up all
8 the merchandise that we had there,
9 packing up all the store, arranging all
10 the operation transportation, you know,
11 to bring the merchandise back.
12 Unfortunately, laying off the whole
13 personnel.

14 Q. How many people were working in
15 the store?

16 A. If I'm not mistaken, it was
17 eight people. But, you know, there was
18 the store manager, assistant store
19 manager, the sales team, and two
20 tailors.

21 Q. And all these folks were given
22 short notice that they were out of
23 work?

24 A. Unfortunately, these guys, they
25 were given, you know, two, three days

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 notice. They were so nice that they
 3 helped in packing the store. They
 4 stayed with us, you know, until we lock
 5 door, you know, for the final time, and
 6 they help us packing inventory,
 7 scanning, doing all the operation, to
 8 make sure we were taking everything,
 9 and everything was accounted properly.
 10 Also, because we needed to make sure
 11 our inventory was getting in the
 12 warehouse correct.

13 Q. Right. And I'm going to get to
 14 that. Approximately when did you
 15 succeed in closing the store down and
 16 handing keys back to the landlord?

17 A. It was the beginning of August.

18 Q. And in connection with this
 19 project, did the company incur certain
 20 costs?

21 A. Absolutely.

22 Q. Let's start with the inventory.
 23 Okay. Was there inventory in this
 24 store?

25 A. There was a significant

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 Express.

3 Q. Now, as a result of this hasty
 4 move from the -- with the inventory to
 5 the warehouse, is there certain losses
 6 to the inventory occur [sic]?

7 A. Not during transportation. If
 8 there was, you know, a loss of
 9 inventory, it was minimal. Like I
 10 said, it's part of the variable. It's
 11 part -- it's within the tolerance.

12 Q. Let me put it this way, you had
 13 to dispose of the inventory, correct?
 14 There was loss of inventory value?

15 A. If we're talking about inventory
 16 value, yes. Because when you sell, the
 17 merchandising basically became, you
 18 know, jobber material. That is --

19 Q. What is --

20 (Simultaneous speaking.)

21 A. When the merchandise is --
 22 becomes what we call "old," "obsolete,
 23 "out of season," you pull it out of the
 24 store and either your outlet or you
 25 sell it to jobbers that they buy

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 inventory in the store because, as I
 3 said before, it was the store that was
 4 fully filled with merchandise.

5 Q. And how did you go about
 6 determining what the inventory is when
 7 you got out there?

8 A. Everything is barcoded, and it's
 9 logged into the retail POS system.
 10 Everything is barcoded and scanned.

11 Q. Did you do that or your
 12 assistant?

13 A. I think I did 80 percent of the
 14 scanning because I wanted to make sure
 15 that every piece that were taken out
 16 and sent back to the warehouse was
 17 accounted for.

18 Q. Was that accomplished?

19 A. It was.

20 Q. So the merchandise was shipped
 21 to a warehouse?

22 A. It was shipped to our 3PL, our
 23 external warehouse service provider.

24 Q. Where is that?

25 A. Secaucus. It's called Model

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
 2 usually you know 10, 15 cents on a
 3 dollar, and then they resell it to the
 4 Saks Off Fifth, the Century 21, you
 5 know, to its --

6 Q. Secondary market?

7 A. Correct.

8 Q. So in that process of disposing
 9 that inventory, that had to be
 10 accomplished in a rather hasty manner?

11 A. It was -- let me say, it was a
 12 very delicate situation because think
 13 -- put yourself for one moment with the
 14 company. The company was trying to --

15 THE ARBITRATOR: Hang on.

16 Mr. Torello-Viera, let's just
 17 respond to Mr. Crowe's question.
 18 He didn't ask you about the
 19 position of the company. He just
 20 asked if that was a hasty
 21 situation.

22 THE WITNESS: Yes, it was.

23 Q. And by hasty did -- was it the
 24 result of this -- withdrawn.

25 In the ordinary course of

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 orderly broad out of inventory, there
3 is not the same loss of value; am I
4 correct?

5 A. You're correct.

6 Q. Can you tell me, approximately,
7 was there a -- a percentage figure in
8 terms of the loss of dollar value as a
9 result of the conduct that the doctor
10 here arranging for this store to be
11 shut down on such short notice?

12 A. If my recollection is correct,
13 the value of the inventory, the cost
14 was a little less than a million. If
15 you sell for 10 cents on retail dollar,
16 you can do the math.

17 Q. So it was substantial costs?

18 A. Yes.

19 Q. And if we were to say you lost
20 10 percent, that's very conservative;
21 am I correct?

22 A. Yes. Can I add --

23 THE ARBITRATOR: No. Let's
24 try to stick to the questions.

25 Mr. Torello-Viera, so my

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 question is: Was there a, like,
3 a - sale at the store?

4 THE WITNESS: We didn't have
5 time.

6 THE ARBITRATOR: So the
7 answer is no.

8 THE WITNESS: No.

9 THE ARBITRATOR: And did you
10 attempt to sell to a jobber, or
11 to preserve the integrity of the
12 brand, did you decide not to do
13 that?

14 THE WITNESS: We did both.
15 That was the point that I was
16 mentioning before, because we
17 sold the inventory, but at the
18 same time being very careful how
19 much and where we were selling
20 the good, not to flood the market
21 on a brand that was trying to,
22 basically, reshaping and gain
23 even a stronger, you know, brand
24 recognition.

25 THE ARBITRATOR: So am I

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 correct then that some was sold
3 to a jobber and then some was
4 sent to the warehouse, right?

5 THE WITNESS: No. It was --
6 everything was sent to the
7 warehouse and then from there we
8 start the sale to the jobber.

9 THE ARBITRATOR: Okay. Now
10 I understand. Why don't you
11 proceed.

12 THE WITNESS: Because our
13 jobbers, they are located in New
14 York, New Jersey area, and they
15 want to see the merchandise.

16 Q. This is somewhat an orderly
17 process in order to preserve some
18 value, correct?

19 A. Yes.

20 Q. Now, the question I have now,
21 sir, in addition to this damaged
22 inventory value, were there other
23 ancillary costs incurred by the company
24 as a result of the precipitous shut
25 down?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 A. Yes, they were.

3 Q. And did you -- could you just --
4 for purposes of our hearing, can you
5 just tell us, generally, what some of
6 those cost were?

7 A. The first one, sorry if I'm
8 smiling, because you guys -- because we
9 had legal fees. Not only for involving
10 Stephen Brown and your law firm, but
11 also we had Stephen hire a colleague in
12 Las Vegas.

13 Q. So it was Nevada counsel?

14 A. Yes.

15 Q. Did he tell the cost, the fee
16 was approximately \$26,000?

17 A. Yes.

18 Q. Does that sound reasonable?

19 A. Yes.

20 Q. And does that sound correct?

21 A. Yes. I would say it sounds
22 right.

23 Q. You also flew out there and
24 incurred transportation expenses?

25 A. Yes.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Q. If I were to tell you that
3 transportation costs were in the order
4 of \$6,000; would that sound correct?

5 A. Yes.

6 Q. Did the company also have to pay
7 severance to these folks that were
8 working so hard for you?

9 A. Yes. I mean, we had to lay off,
10 unfortunately, everybody and we offered
11 severance to all of them because they
12 were not responsible for this
13 unfortunate situation.

14 Q. And if the company's records
15 reflected severance pay of almost
16 \$12,600, would that be correct in your
17 view?

18 A. Yes.

19 Q. And then going forward in 2017,
20 '18, '19, there has been additional
21 costs as a result of this controversy
22 resulting from the defendant's conduct?

23 A. I can talk to the end of 2016,
24 then I left the company. So I have no
25 say in that.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 I'm sorry, but I'm confused. The
3 testimony is that there was a
4 store in Las Vegas. You're now
5 saying that Forall ran it at the
6 end. Are you talking about
7 during the earlier period of
8 time? Because, certainly, if
9 Forall was party to a management
10 agreement, then customers walked
11 in off the mall street, it was a
12 retail operation, so maybe you
13 would clarify that.

14 MR. CROWE: I'm talking
15 about in the context of the
16 period of time when Sarah was to
17 run the business and had been
18 running the business, what the
19 cost structure is of the Forall
20 company and going forward for
21 when they were supposed to take
22 over this company in 2016.

23 THE ARBITRATOR: All right.
24 So you're talking about prior to
25 the management -- to the Forall,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Q. Thank you. Now, I want to talk
3 about the cost, what we would call the
4 product cost, and how we value that in
5 terms of analyzing the damages that
6 flow to the plaintiff in this
7 circumstance.

8 There is such a thing as margin
9 in this business; is that correct?

10 A. Yes.

11 Q. Now, you've been in this close
12 to 30 years. So in the course of that
13 experience, you've learned what the
14 cost for the manufacturers, such as the
15 respondent; is that correct?

16 A. Yes.

17 Q. And in this circumstance, Forall
18 is -- is allowing this as wholesaler,
19 correct, as opposed to current retail
20 cost operations under the license
21 agreement?

22 A. Absolutely.

23 Q. Can you explain how the cost
24 structure in terms of the product --

25 THE ARBITRATOR: Counselor,

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 Sarah management agreement,
3 right?

4 MR. CROWE: Well, prior and
5 September -- prospectively
6 September of 2016 going forward
7 when Sarah stepped in.

8 THE ARBITRATOR: Mr. Crowe,
9 why don't you rephrase the
10 question.

11 Q. In the context of going forward
12 from September 2016, when Sarah needs
13 to be operating its business, I want
14 you to tell me what is the margin or
15 cost that we incurred on a
16 representative basis for the sample
17 product made by Forall?

18 MR. LEWIS: Objection.

19 THE ARBITRATOR: What is the
20 objection?

21 MR. LEWIS: To the extent
22 Mr. Torello-Viera is going to
23 testify what the cost structure
24 would be like after he left the
25 company in 2016, I do not think

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 that's an appropriate line of
3 testimony for this witness.

4 MR. CROWE: Well, he --

5 THE ARBITRATOR: Mr. Crowe,
6 not necessary. Overruled. He
7 may know. He -- just because he
8 left the company, doesn't mean he
9 didn't know. So once again, if
10 he so testifies, you can explore
11 as to the basis of his knowledge.
12 Overruled.

13 Q. What was the cost of Forall for
14 these products on a margin?

15 A. Just to clarify, we're talking
16 about the cost as wholesaler?

17 Q. Correct.

18 A. So usually the cost -- the
19 margin that you do as a wholesaler is
20 50 percent and up. Let me say, average
21 company is 50 percent. Top companies,
22 they can go up to 75 percent.

23 Q. When you say "50 percent
24 margin," does that mean the profit
25 factor, essentially, is 50 percent?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 A. Yes.

3 Q. And does that go into play in a
4 circumstance when we're dealing with a
5 relationship between Forall and Sarah
6 operating the store respectively in
7 2016 going forward?

8 A. On the wholesale side of the
9 business, the variable cost that you
10 have is if you have an agent, then you
11 pay commission.

12 Q. And that would be it. The
13 variable cost general talking about
14 credit card and personnel expenses at
15 the store; is that correct?

16 A. That is on the retail side of
17 the business, so if the next step is
18 from wholesale to retail, but there you
19 have a 60 percent additional mark up.

20 Q. Right.

21 A. So what I'm saying is that the
22 50 that became 100, you know, Forall's
23 wholesale, it become 250 MSRP.

24 Q. Right.

25 A. Because there you have the cost

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 A. Yes. Let's assume that we sell
3 an item at \$100, wholesale, the cost is
4 50.

5 THE ARBITRATOR:
6 Mr. Torello-Viera, does Forall
7 have its own manufacturing
8 facility?

9 THE WITNESS: Yes, it does.
10 For some product categories. Not
11 for everything.

12 THE ARBITRATOR: I see. Is
13 the manufacturing facility
14 located in Italy.

15 THE WITNESS: Yes.

16 THE ARBITRATOR: And for
17 other things it contracts with
18 others to do the manufacturing;
19 is that right?

20 THE WITNESS: Yes.

21 THE ARBITRATOR: Okay. I'll
22 let counsel continue. I just
23 needed to know that.

24 Q. So you heard the term "variable
25 cost"?

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 of the store, the personnel --

3 Q. I'm not asking about that. I'm
4 asking about solely in the relationship
5 between Forall, 2016, going forward,
6 assuming Sarah lived up to their --
7 Sarah lived up to their bargain and got
8 back into the business, the cost to
9 margin is approximately 50 percent?

10 A. Correct.

11 Q. Because the cost is the
12 manufacturing and any duty and freight
13 to get it to Las Vegas Nevada correct?

14 A. Yes.

15 Q. Now, when you went out there in
16 Nevada, and you had close the store
17 down, did this have some impact on the
18 brand name and representation in the
19 marketplace?

20 A. Absolutely.

21 Q. Can you describe what was the
22 result of this unfortunate exercise by
23 the doctors?

24 A. You know, as we said before, we
25 were looking into several

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 possibilities, opportunities. So that
3 would have meant to the market we
4 stayed here and we moved out of the
5 store or we found a better location,
6 you know, different situation.

7 To close the store over night,
8 unfortunately, in the middle of market
9 -- so going back to New York where we
10 were seeing all the customers, the
11 Nordstrom, Neiman, the Saks that I
12 mentioned today, and the rumor spread
13 out immediately, and to justify why the
14 store was shut down, that put a big
15 dent on our representation.

16 Q. Now, there's been some
17 speculation by witness, if you recall,
18 that Forall was in the position to open
19 a new store in 18 months in the place
20 that required minimal sales. What is
21 your response to that assertion?

22 A. Open the store, I would say --

23 THE ARBITRATOR: He's
24 talking about the possibility of
25 something in Beverly Hills maybe.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 question was: "Did Forall put
3 out a press release in connection
4 with the closing of the store."

5 THE WITNESS: Honestly,
6 Mr. Farber, due to the unpleasant
7 situation and the difficult
8 position that they put it in, we
9 kept it as low profile as
10 possible, and we were talking to
11 the client when they would come
12 into the store. But we did not
13 do the press release or any --

14 THE ARBITRATOR: Are you
15 aware if there were any notices
16 on the web regarding the closure
17 of the store?

18 THE WITNESS: I'm not aware.

19 THE ARBITRATOR: Okay. Go
20 ahead counsel.

21 Q. So I would follow up on that, do
22 you believe that this transaction, this
23 debacle, hurt the brand name going
24 forward and Pal Zileri?

25 A. Absolutely.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 MR. CROWE: I'm talking
3 about in Las Vegas.

4 THE ARBITRATOR: Okay.

5 Q. Let me be clear in my question.
6 I'm talking about a claim, the theory,
7 that Forall should try and get a new
8 operator in the business and in one of
9 these malls in Las Vegas, not
10 withstanding the brand damage done to
11 the company, but it's -- in general?

12 A. Our industry is big, but it's
13 very small at the same time. We were
14 evicted officially. How can we find a
15 new landlord that is going to take us
16 in after being evicted by someone else?
17 That would have been very, very -- not
18 impossible, but extremely difficult.

19 THE ARBITRATOR: Did Forall
20 put out a press release upon the
21 closing of the store?

22 THE WITNESS: No.

23 MR. LEWIS: What was the
24 question?

25 THE ARBITRATOR: The

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 MR. LEWIS: Objection.
3 THE ARBITRATOR: What's the
4 objection?

5 MR. LEWIS: The
6 characterization that counsel is
7 using "debacle," things like
8 that. If you can ask the
9 question without that --

10 THE ARBITRATOR: Let's
11 sustain that. Let's use just,
12 "Did the closing of the store,"
13 we don't need "debacle".

14 Q. Was the closing of the store a
15 significant damage to the brand?

16 A. Yes it was.

17 Q. By the way, do you know if
18 Alfonso paid that \$38,000 credit that
19 we had heard about they were required
20 to do so under the management
21 agreement?

22 A. I had conversation with Alfonso,
23 and he told me that the \$38,000 were
24 paid, and, as far as I know, Forall
25 USA, and myself first, we would have

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 not paid Alfonso unless we were almost
3 sure that he had paid the \$38,000.

4 Q. Okay.

5 MR. CROW: Thank you.

6 That's all I have.

7 THE ARBITRATOR: Okay. Let

8 me just ask one follow-up

9 question from what Mr. Crowe just

10 asked. Do you know of any

11 specific potential transactions

12 that Forall was involved with

13 which did not materialize either

14 in part or in whole because of

15 the closing of the store?

16 THE WITNESS: The general

17 sense of the clientele --

18 THE ARBITRATOR: I didn't

19 ask about general sense. I asked

20 if you knew of any specific

21 transactions, so I used the word

22 "specific." I'm not asking about

23 general.

24 THE WITNESS: Not --

25 THE ARBITRATOR: In other

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 conversation with where you know
3 that it did not materialize, to
4 use your words, in whole or in
5 part because of the closing of
6 the Las Vegas store?

7 THE WITNESS: We were in
8 conversation with Neiman Marcus.

9 That never became a reality, and

10 also, you know, Saks Fifth Avenue

11 and Nordstrom, refused the order

12 or they did not meet what we

13 budgeted.

14 MR. CROWE: One more
15 follow-up, if I may, Mr. Farber.

16 THE ARBITRATOR: That's all
17 right, Mr. Crowe. Go ahead.

18 Q. Did any clients inquire about
19 this at the showroom level about what
20 transpired?

21 A. Almost every client that came
22 into the showroom was asking about what
23 happened in Vegas.

24 Q. That was very unfortunate.

25 A. Yes.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 words, are you aware that someone
3 approached you to buy something
4 or to be a distributor or to do a
5 joint venture or to do some other
6 transaction, and this specific
7 transaction did not proceed in
8 whole or in part as a result of
9 the closing of the store?

10 THE WITNESS: Not to that
11 extent. But if I may, clients
12 retailers, you know, were more
13 skeptical in doing business with
14 us.

15 THE ARBITRATOR: Do you know
16 of any retailer who declined to
17 do business with you in whole or
18 in part because of the closing of
19 the store?

20 THE WITNESS: I can tell you
21 that those days we were in
22 conversation with some stores
23 that did not materialize.

24 THE ARBITRATOR: And can you
25 name a store that you had such a

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA
2 THE ARBITRATOR: There are
3 -- I know Fashion World and there
4 are other publications both
5 online and actually hard copy; do
6 you know if there were any
7 articles about the closing of the
8 store?

9 THE WITNESS: Mr. Farber, I
10 don't recall any articles.

11 MR. CROWE: Mr. Farber, one
12 more follow up.

13 THE ARBITRATOR: Okay.

14 Q. The conversations and all this
15 -- at the showroom level, did that
16 impact on the sales for the company?

17 A. Again, the rumor was out, so it
18 affected, you know, the credibility of
19 the company and how long they've been
20 in business.

21 Q. Okay.

22 MR. CROWE: Thank you.

23 THE ARBITRATOR: Okay.

24 Anything further, Mr. Crowe?

25 MR. CROWE: No.

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR: Thank you
3 very much, Mr. Lewis. Are you
4 prepared to proceed or do you
5 need a moment? You're on mute.
6 Mr. Lewis, you're on mute.

7 MR. LEWIS: Thank you. Is
8 now a good time to take our
9 afternoon break?

10 THE ARBITRATOR: If it helps
11 you in terms of your preparation
12 to blend it, we can do that.
13 Let's take our 15 minutes at this
14 point, and then we'll begin with
15 the cross examination. All
16 right.

17 (Whereupon, a recess was
18 taken at this time.)

19 THE ARBITRATOR: Okay. Now,
20 Mr. Torello-Viera, let's go back.

21 THE WITNESS: We're waiting
22 for Stephen Brown, Mr. Farber, if
23 you don't mind.

24 THE ARBITRATOR: Sure. Mr.
25 Torello-Viera, you know that at

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 various points during the direct
3 I cautioned you just to respond
4 to the question. Now, on cross
5 we're much stricter. Do you have
6 a pad near you?

7 THE WITNESS: I do.

8 THE ARBITRATOR: Good. So
9 perhaps it's been explained to
10 you the protocol that I and a lot
11 of other arbitrators use, and
12 it's really protocol to try to
13 minimize disputes and move the
14 cross along at a quicker pace.

15 So here's what I want you to
16 do: Mr. Lewis is going to be
17 asking you some questions, and
18 all I want you to do is listen to
19 his question and respond as
20 directly and as succinctly as you
21 can.

22 That means that you can say,
23 "Yes, no, I don't remember, I
24 don't know." That's fine. There
25 are going to be times where

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 you're going to want to explain.
3 You're going to think that Mr.
4 Lewis' question and the answer of
5 "no" or "yes" doesn't give me the
6 full explanation and you're going
7 to want to explain.

8 Do not explain unless Mr.
9 Lewis asks you or I ask you.
10 What you can do is make a note on
11 your pad, and when Mr. Lewis is
12 finished with his question, I'll
13 give you the opportunity to
14 consult, again, with Mr. Brown
15 and Mr. Crowe, and then they'll
16 decide if they want to ask you
17 questions to elicit your
18 explanation.

19 Also, Mr. Lewis is in charge
20 of the examination. He's the
21 boss. So do not fight with him,
22 and don't try to anticipate where
23 he is going or anything like
24 that. If there's going to be
25 some sort of fight, he's going to

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1 DIRECT-EXAMINATION MR. TORELLO-VIERA

2 win every time. I'm telling you
3 that right now. So he's in
4 charge of the examination.

5 Your job is simply to listen
6 to him, pause, if Mr. Brown or
7 Mr. Crowe --

8 Who is starting with this
9 one in terms of objecting? Is it
10 you, Mr. Brown?

11 MR. BROWN: Yes. I'll stay
12 with it. Thank you.

13 THE ARBITRATOR: So if
14 Mr. Brown says the word
15 "objection," do not answer the
16 question until I tell you whether
17 or not you should do so.

18 And let -- you have to let
19 Mr. Lewis finish his question.
20 Don't jump in with an answer
21 until he is done, and I'm going
22 to be tough in terms of enforcing
23 this. All right?

24 Mr. Lewis, why don't you
25 proceed.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
 2 MR. LEWIS: Thank you,
 3 Mr. Farber.
 4 CROSS-EXAMINATION BY
 5 MR. LEWIS:
 6 Q. Hello, Mr. Torello-Viera. How
 7 are you?
 8 A. I'm good. And you, sir?
 9 Q. I'm doing well. Thank you.
 10 You started -- you were hired as
 11 CEO at Forall USA in -- that was in
 12 July of 2016; is that correct?
 13 A. No.
 14 Q. I'm sorry. July of 2014,
 15 correct?
 16 A. Yes.
 17 Q. That being the case, you do not
 18 have firsthand knowledge about what the
 19 doctors discussed with the former CEO
 20 Marco Baritza in Italy in
 21 November 2012, right?
 22 A. Yes.
 23 Q. That's correct, you don't have
 24 firsthand knowledge about what was
 25 discussed at that meeting, right?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
 2 by simply leaving out reference
 3 to the testimony.
 4 And there's also no need to
 5 ask the witness to tell me what
 6 Mr. Spano testified to because
 7 I've heard it.
 8 Q. Do you understand that there's
 9 been testimony and there have been
 10 discussions about the perspective
 11 purchases from the doctors being based
 12 on prior season sales; do you
 13 understand that?
 14 A. Yes.
 15 Q. Do you have any reason to doubt
 16 that Mr. Spano and Mr. Baritza had the
 17 conversations that Mr. Spano testified
 18 to?
 19 MR. BROWN: Objection.
 20 You're asking this witness to
 21 weigh the credibility of prior
 22 testimony. I don't think that's
 23 proper.
 24 THE ARBITRATOR: No. No.
 25 He may have a reason to doubt

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
 2 A. Yes.
 3 Q. So let me ask, were you present
 4 for Mr. Luca Spano's testimony on
 5 Monday in this arbitration?
 6 A. Yes.
 7 Q. And do you recall Mr. Spano
 8 testifying that at the meeting in Italy
 9 he and the CEO, Marco Baritza, decided
 10 they were going to be, "lenient" is the
 11 word Mr. Spano used, on the minimum
 12 purchase requirement with the doctors;
 13 do you recall this testimony?
 14 A. Yes.
 15 Q. And Mr. Spano testified that its
 16 perspective purchase requirement would
 17 be based on past season's sales; do you
 18 recall that?
 19 MR. BROWN: Objection.
 20 Mischaracterizes the testimony.
 21 THE ARBITRATOR: All right.
 22 Why don't you rephrase and --
 23 because I don't think that's
 24 exactly what he testified to.
 25 And you can easily accommodate it

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
 2 because one of those people may
 3 have told him that's not true or
 4 he may have read that that's not
 5 true. So if he has that
 6 information, he can respond.
 7 Mr. Torello-Viera.
 8 Q. The answer is, no, you have no
 9 reason to doubt that testimony?
 10 A. Not what I said.
 11 THE ARBITRATOR: Let's
 12 clarify that and see if we can
 13 get it straight.
 14 Mr. Torello-Viera, do you
 15 have knowledge one way or another
 16 whether the minimum purchase
 17 requirement was replaced with a
 18 -- some form of requirement that
 19 related to prior years' sales; do
 20 you have any knowledge of that?
 21 THE WITNESS: No, I don't.
 22 THE ARBITRATOR: Okay. Go
 23 ahead, Mr. Lewis.
 24 MR. LEWIS: Thank you.
 25 Q. Can you please describe your

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 relationship with Italnord and Forall
3 when Italnord operate the store?

4 A. Italnord is business partner of
5 Forall. They have an office in Mexico
6 and the distribution in Mexico and they
7 have some retail stores.

8 Q. Do you have independent
9 contracts with Italnord for their
10 stores in Mexico?

11 A. The relationship Italnord,
12 Forall is handled directly between
13 Italnord and Forall, Italy headquarter.

14 Q. Do you know whether headquarters
15 enters into contracts with Italnord for
16 the stores that Italnord operates?

17 A. I'm not sure.

18 Q. Do you know whether there was a
19 minimum purchase requirement that
20 Italnord agreed when it agreed to
21 operate the Las Vegas store?

22 MR. BROWN: Objection.

23 Because he has testified to this,
24 but go ahead.

25 THE ARBITRATOR: Well, is

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 there an objection or not an
3 objection?

4 MR. BROWN: It's an
5 objection. He previously
6 testified he believed it was
7 pursuant to the license
8 agreement.

9 THE ARBITRATOR: It's okay.
10 It's cross. Overruled. You can
11 answer.

12 Do you have the question in
13 your head, Mr. Torello-Viera.

14 THE WITNESS: Yes, I do,
15 sir.

16 A. And like I said before,
17 according to my knowledge, Italnord
18 during the period that they managed the
19 Las Vegas store, they purchased
20 according to the minute requirements.

21 Q. I just want to note that in Mr.
22 Brown's objection lie the answer that
23 Mr. Torello-Viera just gave, but I'll
24 move on.

25 Do you know, Mr. Torello-Viera,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 if there was a contract signed between
3 Forall and Italnord when Italnord
4 operated the store, the Las Vegas
5 store?

6 A. There was a management agreement
7 signed between -- between Italnord and
8 Sarah. That's for sure.

9 Q. And the question I'm asking, Mr.
10 Torello-Viera, is whether there was a
11 contract signed between Forall and
12 Italnord?

13 A. I don't remember.

14 Q. You don't remember?

15 A. Nope.

16 Q. You testified earlier that when
17 you came on board as CEO you educated
18 yourself as to what was going on in
19 this Las Vegas store, including the
20 reading of the operating agreement; do
21 you recall that?

22 A. Yes.

23 Q. You read the lease with Sarah,
24 correct [sic]?

25 MR. BROWN: That was

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 mumbled.

3 THE ARBITRATOR: Why don't
4 you repeat it, Mr. Lewis?

5 Q. Did you read the lease with
6 Simon?

7 A. If I made the lease with Simon?

8 THE ARBITRATOR: No. The
9 question is: Did you read the
10 lease between Sarah and Simon?

11 THE WITNESS: Yes.

12 Q. You're doing these things to
13 educate yourself on what you called
14 your flagship store in the United
15 States, including reading the pertinent
16 agreements with Sarah and Forall, and
17 the lease with Simon and Sarah. Are
18 you saying you didn't take the time to
19 determine whether there was a contract
20 between Forall and Italnord?

21 MR. BROWN: Objection.

22 THE ARBITRATOR: You're
23 saying he did not take the time,
24 okay. Sustained, because I don't
25 think he said anything about the

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CROSS-EXAMINATION MR. TORELLO-VIERA
time factor. So why don't you
rephrase that, Mr. Lewis.

Q. Did you -- did you check to see
whether there was a contract between
Forall and Italnord when you came on
board as CEO?

A. I don't remember being a
contract there.

Q. That's not my question, sir.
Did you inquire whether there was a
contract between Forall and Italnord
when you came on board as CEO?

A. I don't remember.

Q. But you remember clearly reading
the other agreements that were in
place?

A. As far as my recollection goes,
there was no contract.

Q. Do you have anything to support
that understanding?

MR. BROWN: I'm just
objecting. He gave his answer,
Mr. Farber. If -- if
Rodney would like to put in a

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CROSS-EXAMINATION MR. TORELLO-VIERA
document in front of him and ask
him if he looked at that
particular document, something to
that effect, that might be much
more helpful.

THE ARBITRATOR: Mr. Brown,
it's arbitration. And I suggest
that I've got some very good
counsel before me, so I don't
think we have to tell Mr. Lewis
how to conduct his examination.
He's capable of doing it. We're
going to let him do it in his own
style. The same way you and Mr.
Crowe do it in your style.

Mr. Lewis, why don't you
repeat your question and we'll
let him answer, assuming it's not
a totally completely different
question.

Q. Did you inquire whether there
was a contract in place between Forall
and Italnord when you came on board as
CEO?

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CROSS-EXAMINATION MR. TORELLO-VIERA
A. To my knowledge, and to my
recollection, there was not a contract.

Q. Mr. Torello-Viera, I'm asking
you if you made inquiries. Did you
speak with someone? Did you ask if
there was?

A. I don't remember.

Q. Is your testimony that Italnord
was a business partner of Forall and
operated several stores? Did I hear
that correctly?

A. Yes.

Q. And were you familiar with the
track record that Alfonso Entebi and
Italnord had selling Pal Zileri
merchandise?

A. In Mexico?

Q. Yes, in Mexico. Yes.

A. Yes.

Q. Was he successful selling Pal
Zileri in Mexico?

A. Overall, yes. Not all the
stores.

Q. Would you consider him to be an

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CROSS-EXAMINATION MR. TORELLO-VIERA
experienced retailer of high-end mens'
fashion wear?

A. For Mexico, yes.

Q. Are you making a distinction
because they didn't perform well in Las
Vegas; is that what you're doing?

A. No.

Q. Do you know what -- do you know
whether Italnord successfully operated
the Las Vegas store? What I mean by
that is: Were they profitable?

A. I know there is a difference
managing a store in Mexico and managing
a store in U.S. or New York or
elsewhere.

THE ARBITRATOR: Let's stick
with the question, Mr.

Torello-Viera. We've got to
stick with the question.

Restate the question, Mr.
Lewis.

Q. Do you know whether Italnord was
successful in operating a Las Vegas
store? And by that I mean, do you know

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 whether they were profitable?

3 A. I don't have access to those
4 figures.

5 THE ARBITRATOR: The answer
6 is "yes," "no," or "I don't
7 know".

8 A. I don't know.

9 THE ARBITRATOR: Okay.

10 Q. Are you aware that Mr. Entebi
11 informed Sarah and Forall that they
12 would not be moving forward operating
13 the store after the initial term in the
14 management agreement; are you aware of
15 that?

16 A. Yes.

17 Q. You're aware that that was
18 because the store wasn't performing up
19 to its expectations; are you aware of
20 that?

21 MR. BROWN: Objection.

22 THE ARBITRATOR: What's the
23 objection?

24 MR. BROWN: I mean, that was
25 the reason. I don't know if

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 read by the reporter.)

3 MR. LEWIS: Mr. Farber, may
4 I say this before we go forward,
5 I've been very respectful of
6 Mr. Brown and his flow when
7 something has been -- let's just
8 say objectionable, to the point
9 where I felt like I needed to say
10 something I have, otherwise, I've
11 allowed him to get in a flow with
12 his witnesses.

13 Right now, we're just
14 getting started and we're
15 spending a lot of time dealing
16 with objections.

17 THE ARBITRATOR: I think
18 both counsel have been respectful
19 of each other and me, and I
20 appreciate it, and I think we can
21 continue. And I'm not going to
22 overall, like, limit anyone's
23 ability to object.

24 On the other hand, both
25 counsel know it's arbitration, so

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 that's factual.

3 THE ARBITRATOR: Well, he's
4 -- that's why he's asking -- it
5 might become factual if he says
6 yes. So we'll overrule the
7 objection.

8 You can answer.

9 THE WITNESS: Can you repeat
10 the question, please.

11 THE ARBITRATOR: The
12 question is -- you can repeat it,
13 Mr. Lewis.

14 MR. LEWIS: Maggie, can you
15 read that back for us, please.

16 THE ARBITRATOR: Do you know
17 if the reason why they didn't
18 want to continue is because they
19 weren't doing well in the store?

20 MR. BROWN: That's a
21 different question.

22 THE ARBITRATOR: Maggie,
23 read it back. I think it was
24 pretty much the same.

25 (Whereupon, the record was

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 we're not bound by the rules of
3 evidence, and I'm just looking to
4 get an essential testimony of
5 each witness. So guys, let's
6 move on. All right. Okay. So
7 the essence of the question was:
8 Do you know if they gave notice
9 that they didn't want to continue
10 because the store was not doing
11 well?

12 THE WITNESS: Yes. That's
13 what I heard.

14 Q. Okay. So to have an experienced
15 operator, Alfonso Entebi, who could not
16 make it work in this Las Vegas store,
17 this is what you were told, correct?

18 A. Yes.

19 Q. Okay. And after Alfonso Entebi
20 informed Sarah that he would not move
21 forward operating the store after the
22 initial term of the management
23 agreement, were there discussions about
24 finding a new tenant for the store?

25 A. Not with me.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. Not with you. Okay. I'm going
3 to show you -- Mr. Torello-Viera, can
4 you see my screen?

5 A. Yes, sir.

6 Q. Do you see a series of e-mails,
7 first one dated October 8, 2014; do you
8 see that?

9 A. Yes, sir.

10 Q. And this is an e-mail from
11 Alfonso Entebi to Amar Hamad and others
12 including you, correct?

13 A. Yes, I am CC'd on the e-mail.

14 THE ARBITRATOR: Guys, let's
15 just identify on the record that
16 this is Exhibit 54. Go ahead.

17 MR. LEWIS: Thank you,
18 Mr. Farber.

19 Q. I'm going to really quickly, for
20 you, Mr. Torello-Viera. "As we talked
21 and explained, I asked you to please
22 confirm to me and Paolo Torello-Viera,
23 CEO Americas Pal Zileri, that we are
24 authorized and can go forward with
25 prospective tenant for a possible take

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 agreement?

3 A. I don't know. To me -- again, I
4 was CC'd.

5 THE ARBITRATOR: No. No.

6 No. You answered the question.

7 The answer is you don't know.

8 That's all. Next question.

9 Q. And Dr. Bachar Hamad sends back
10 an e-mail on October 2014 saying, "You
11 can send a copy of the lease." Did you
12 all send a copy of the lease to the
13 prospective tenant?

14 MR. BROWN: Objection.

15 THE ARBITRATOR: What's the
16 objection?

17 MR. BROWN: "You all."

18 MR. LEWIS: Mr. Alfonso
19 Entebi is asking on behalf of
20 Paolo Torello-Viera, CEO, to send
21 a copy of the lease to the
22 prospective tenant.

23 THE ARBITRATOR: Why don't
24 you rephrase the whole question.

25 Q. Mr. Torello-Viera, did you

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 over of the store." Do you see that?

3 A. Yes.

4 Q. You're referenced in this e-mail
5 as seeking confirmation from Sarah that
6 you are authorized to go forward with a
7 respective tenant; do you see that?

8 A. Yes, sir.

9 Q. And Dr. Hamad responds back to
10 you, "Okay, go ahead and proceed"; do
11 you see that?

12 A. Yes.

13 Q. Okay. And as we continue in
14 this e-mail thread, Alfonso writes
15 back, "Paolo Torello-Viera CEO Forall
16 USA, making sure you're getting the
17 full credentials in this e-mail, is
18 advancing with the prospect of a new
19 tenant. Please confirm that we can
20 send them a copy of the executed lease
21 agreement between Sarah and the mall."
22 Do you see that?

23 A. Yes, sir.

24 Q. Who was the prospective tenant
25 that was waiting for the lease

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 personally send a copy of the lease
3 back to the perspective tenant?

4 A. No. I don't know who it was.

5 Q. You don't know who he was. Do
6 you know if Alfonso Entebi sent a copy
7 of the lease back to the perspective
8 tenant?

9 A. I don't know.

10 Q. We started out of a big portion
11 of your testimony, this line of
12 questioning, you saying, "No one had a
13 conversation with me about finding a
14 perspective tenant after Alfonso Entebi
15 said he wasn't going to go on after the
16 initial term." Do you recall saying
17 that?

18 A. Yes.

19 Q. Is that accurate?

20 A. That's what I said.

21 Q. That's not an answer to the
22 question, sir. Was that accurate?

23 A. I think so.

24 Q. You think so. Did you respond
25 back to this e-mail thread, Mr.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 Torello-Viera?

3 A. No.

4 Q. Your testimony today is that you
5 did not respond back -- you did not
6 participate in this e-mail thread;
7 that's your testimony?

8 A. I did not answer to these
9 e-mails. As I was saying before, I was
10 CC'd.

11 MR. LEWIS: Mr. Farber?

12 THE ARBITRATOR: Yes.

13 MR. LEWIS: We -- you just
14 heard this, there's a document
15 that I recently received which is
16 a part of this e-mail thread. It
17 has not been produced in this
18 matter, but I want to use it for
19 impeachment purposes because. It
20 goes to the credibility of the
21 witness.

22 THE ARBITRATOR: That may
23 be, but why wasn't it produced?

24 MR. BROWN: We received it
25 after the production -- we

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 I was not allowed to introduce
3 the business proposal plan which
4 had multiple impeachment
5 purposes.

6 That, in fact, was produced
7 prior to this hearing. If
8 they're producing documents now
9 in e-mails, what things else
10 didn't they provide to us?

11 THE ARBITRATOR: Mr. Brown
12 -- Mr. Brown, all I asked was if
13 you had an objection. That's
14 all. I think you ought to look
15 at it, but it's up to you. If
16 you want to post your objection
17 on the basis of non-production, I
18 have not heard a good reason for
19 non-production.

20 And guys, look, I don't do
21 this to be harsh. I'm actually
22 not good at being harsh. I do
23 this because it's not fair, and
24 that's the reason it's not trial
25 by ambush. So unless there's

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 recently received it. It is part
3 of this thread we produced the
4 version -- an incorrect version
5 of this thread. The thread has a
6 response from Mr. Paolo
7 Torello-Viera, and it should have
8 been produced by Sarah -- excuse
9 me -- by Forall as well.

10 THE ARBITRATOR: You have
11 shown a copy of this document to
12 Mr. Brown.

13 MR. LEWIS: I have not. I
14 have not had an opportunity to.
15 It is just for impeachment
16 purposes only. I can read it to
17 Mr. Torello-Viera or I can show
18 it to him.

19 THE ARBITRATOR: My
20 suggestion that you very quickly
21 scan it, and send it to
22 Mr. Brown, and ask Mr. Brown if
23 he has any objection.

24 MR. BROWN: I will have -- I
25 can put my objection right now.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 really a good reason, I'm not
3 going to allow in documents that
4 were the subject of a request for
5 document production and were not
6 produced.

7 Now, I really haven't heard
8 a good reason, therefore, the
9 objection is going to be
10 sustained.

11 MR. LEWIS: Mr. Farber, let
12 me just remind you that earlier
13 today Mr. Brown showed a document
14 that had not been produced to
15 refresh Mr. Torello-Viera's
16 recollection.

17 THE ARBITRATOR: If you want
18 to refresh your recollection,
19 someone's recollection, you can
20 use what used to be a telephone
21 book, and I haven't stopped you,
22 but right now you asked to
23 introduce something into
24 evidence.

25 MR. LEWIS: No, I did not.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR: I'm sorry.

3 Then I misconstrued your request.

4 MR. LEWIS: I'm using it to
5 refresh his recollection only.

6 THE ARBITRATOR: Go ahead

7 with your question and we'll see

8 what the story is. I'm not sure

9 -- I'm seeing on the screen an

10 outline of questions, and I'm not

11 sure that you want to show that

12 to everybody.

13 MR. LEWIS: I apologize,

14 Mr. Farber. If you would just

15 give me two minutes, I'm sure I

16 can get this fixed. Okay.

17 MR. BROWN: It seems there

18 was an incomplete production done

19 here. That's the nature of this;

20 materially different than the

21 business proposal plan, which was

22 in possession of Palma Settimi

23 that had been forwarded by Luca

24 and was produced prior to

25 hearing. Now we're in this

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. That wasn't your testimony. You
3 said that you did not respond, you did
4 not participate in the e-mails, you
5 were only CC'd, remember?

6 MR. BROWN: Mr. Farber, can

7 we at least have him put the

8 e-mail up that he's going to try

9 to refresh his recollection with.

10 I really find this objectionable

11 and distasteful.

12 THE ARBITRATOR: Mr. Brown,

13 calm down. This is cross

14 examination. And you know, many

15 years ago, I sat with an

16 arbitrator who said, you know,

17 don't think we arbitrator's don't

18 have some understanding of what's

19 going on.

20 All right, we've all

21 been there. We understand. Let

22 Mr. Lewis do his thing. He let

23 you do yours. All right? You

24 don't have to be concerned about

25 that. I really have a fairly

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 hearing --

3 MR. LEWIS: Mr. Brown --

4 THE ARBITRATOR: Let's let

5 him continue. If either counsel

6 has some sort of application,

7 I'll consider it, but right now

8 let's let Mr. Lewis finish his

9 cross.

10 Q. Mr. Torello-Viera, you first
11 testified that you weren't part of this
12 conversation about finding a new tenant
13 after Italnord decided it was not going
14 to move on; do you remember that?

15 A. Yes.

16 Q. And that was incorrect, right,
17 you were part of this conversation at
18 least by e-mail, right?

19 A. I was CC'd on the e-mail.

20 Q. Okay. And then you testified
21 that you did not respond in these
22 e-mails. You testified to that effect,
23 correct?

24 A. I don't remember responding to
25 the e-mail.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 good handle of what's going on,
3 and it's arbitration. Just
4 relax. All right?

5 It's the same thing for

6 Mr. Lewis, and he is

7 relaxed, so you relax as well.

8 We'll get there.

9 Mr. Lewis, go ahead with
10 your questions.

11 Q. Mr. Torello-Viera, do you see
12 this e-mail of November 4, 2014? Do
13 you see this, it's on the screen, sir?

14 A. Yes, I see the e-mail.

15 Q. Please read that.

16 THE ARBITRATOR: Counsel,
17 why don't you give us an exhibit
18 number. That's always helpful
19 when I read the transcript. It
20 makes it a lot easier and I can
21 figure out where to go look in
22 the document.

23 MR. LEWIS: This is not an
24 exhibit that's been admitted.

25 We're not trying to admit it into

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 evidence. It's a document that
3 I'm only using to refresh his
4 recollection and impeach.

5 MR. BROWN: Objection.

6 THE ARBITRATOR: He can show
7 it to the witness. I'm not
8 reading it, so go ahead.

9 Q. Mr. Torello-Viera, is this an
10 e-mail from you on November 4, 2014,
11 within this string; do you see that?

12 A. Yes, I see the e-mail.

13 Q. Okay. And you write --

14 THE ARBITRATOR: No. No.

15 No. That's effectively giving me
16 the e-mail. I don't want to hear
17 it. Not in evidence and with
18 good reason I've kept it out of
19 evidence. I don't want to hear
20 it. What's your next question?

21 Q. Would you now admit that you
22 participated in this conversation about
23 finding a new perspective tenant after
24 Italnord decided that he would not
25 continue on?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 whether you participated in
3 trying to find another tenant or
4 do you stick to the same that you
5 don't remember participating in
6 trying to find another tenant?

7 THE WITNESS: I see the
8 e-mail. I don't have any
9 recollection, Mr. Farber.

10 THE ARBITRATOR: Next
11 question.

12 Q. Mr. Torello-Viera, did you
13 demand a brokerage fee to participate
14 in finding a new tenant after Italnord
15 left?

16 MR. BROWN: You showed this
17 to him for recollection purposes.

18 He said he now doesn't --

19 MR. LEWIS: I'm asking a
20 different question.

21 THE ARBITRATOR: Mr. Brown.
22 Mr. Brown, is that an objection?

23 MR. BROWN: That's an
24 objection.

25 THE ARBITRATOR: Overruled.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 MR. BROWN: The question is:

3 Will he now admit that he had
4 some correspondence at this time?

5 MR. LEWIS: Mr. Farber --

6 THE ARBITRATOR: No. He --
7 look, I think he's got the
8 question.

9 Do you understand the
10 question?

11 THE WITNESS: Can you repeat
12 the question.

13 Q. Would you change your testimony
14 as to whether or not you participated
15 in the conversation about finding a new
16 tenant after Alfonso Entebi said that
17 he would not move on or continue on
18 after the end of the term in the
19 management agreement? Would you change
20 your testimony now, Mr.
21 Torello-Viera?

22 THE ARBITRATOR: Give him a
23 chance to read -- Mr.

24 Torello-Viera, do you have a
25 better recollection now as to

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 You can answer.

3 A. I see the e-mail, I don't have
4 recollection.

5 Q. I didn't even reference the
6 e-mail. I asked you did you charge --
7 did you demand a brokerage fee to
8 participate in helping to find a new
9 tenant to operate the store in 2014;
10 that's my question.

11 A. Again, it's in the e-mail. I
12 don't have a recollection.

13 THE ARBITRATOR: Okay. You
14 don't remember that. Okay. Go
15 ahead.

16 Q. Well, to help refresh your
17 recollection then, I'll refer you to
18 the e-mail, where you write -- and I
19 won't read it aloud to Mr. Farber.
20 I'll allow you to read it to yourself.

21 THE ARBITRATOR: Read it to
22 yourself. And does this refresh
23 your recollection as to whether
24 you asked for a brokerage fee?

25 THE WITNESS: It's in the

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 e-mail. I don't remember the
3 whole thing.

4 THE ARBITRATOR: Okay. It
5 does not refresh his
6 recollection. Go ahead.

7 MR. LEWIS: Mr. Farber, I
8 heard it differently. He said,
9 "I don't remember the whole
10 thing."

11 THE ARBITRATOR: Okay. It
12 will be in the record. Go ahead.

13 Q. Mr. Torello-Viera, isn't it true
14 after Italnord left or informed Sarah
15 and Forall that he would not continue
16 on after the initial term, you
17 testified about a letter agreement that
18 Sarah entered into with Simon, correct?
19 Do you remember testifying about the
20 letter agreement?

21 A. Can you give me a specific date?

22 Q. Absolutely. October 23, 2014.
23 There was a letter agreement entered
24 into between Sarah and Simon on
25 October 23, 2014; do you recall

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 Let me ask you a different
3 question.

4 Were you here for Dr. Bachar
5 Hamad's testimony yesterday?

6 A. Yes, I was around.

7 Q. And do you recall Dr. Bachar
8 Hamad testifying that you demanded a
9 brokerage fee to help find a new tenant
10 to take over the store, but he didn't
11 agree to those demands; do you remember
12 that?

13 A. I remember him saying that, yes.

14 Q. And isn't that supported by what
15 you just read to yourself?

16 MR. BROWN: Objection.

17 THE ARBITRATOR: Sustained.

18 It's meaningless to me to know if
19 something is supported by
20 something not in evidence. Next
21 question.

22 Q. Mr. Torello-Viera, you will
23 admit that you were part of discussions
24 in November 2014 to find a new tenant,
25 do you remember, you agree with that

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 testifying about that?

3 A. Yes.

4 Q. You testified that you were
5 upset by that agreement because it was
6 an anticipatory breach of the license
7 agreement for the consignment
8 agreement, it was in the consent
9 agreement, correct?

10 A. Yes.

11 Q. Isn't it true, Mr.
12 Torello-Viera, that you were upset
13 about the letter agreement, which would
14 have allowed Simon to find a new
15 tenant, because it would have
16 effectively cut you out of a brokerage
17 fee that you were demanding to help
18 find a new tenant, yourself?

19 A. No.

20 Q. Mr. Torello-Viera, you would --
21 you say that you don't recall the whole
22 thing, but you acknowledge that you
23 demanded a brokerage -- that language
24 indicates that you were demanding a
25 brokerage fee?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 now, correct?

3 A. I said that I saw the e-mail.

4 THE ARBITRATOR: No. Mr.
5 Torello-Viera, the question is,
6 simply, do you agree that you
7 were in discussions to find a new
8 tenant or not or you don't
9 remember?

10 THE WITNESS: I don't
11 remember.

12 THE ARBITRATOR: Okay. Go
13 ahead. Next question.

14 Q. Mr. Torello-Viera, can you see
15 my screen?

16 A. Yes.

17 Q. And you see that this is
18 Exhibit 51?

19 MR. BROWN: Exhibit 51, is
20 that what you said, Rodney?

21 THE ARBITRATOR: Yes.

22 Q. And so, Mr. Torello-Viera, this
23 string of e-mail start back on
24 October 8, 2014. We covered some of
25 this. This is in evidence, Mr. Farber,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 discussions about the prospective
3 tenant; do you see that?

4 A. Yes. This is the same e-mail
5 you pulled up before.

6 Q. It's a different document with
7 different e-mails, but it does contain
8 some of the same, so you're right.

9 MR. LEWIS: Bear with me as
10 we go up. Okay.

11 Q. Here's what I want you to pay
12 attention to, this section right here.
13 November 4, 2014, you write in this
14 e-mail thread, "Dr. Hamad, it was nice
15 talking to you. As requested, please
16 find attached copy of the lease
17 agreement between Sarah LLC and Forum
18 Shops that was sent to the prospective
19 tenant. I am hopping to talk to the
20 prospective some time this week and
21 will keep you abreast." Do you see
22 that?

23 A. Yes.

24 MR. BROWN: Objection. What
25 did you just read.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 was nice talking to you. As requested,
3 please find attached a copy of the
4 lease agreement between Sarah LLC and
5 the Forum Shops that was sent to the
6 prospective tenant. I am hopping to
7 talk to the prospective some time this
8 week and will keep you abreast,
9 sincerely, PTV," that's you correct?

10 MR. CROWE: Which exhibit
11 are you referring to?

12 MR. BROWN: Hold on. This
13 was not the document, if I'm not
14 mistaken.

15 MR. LEWIS: What's going on?

16 THE ARBITRATOR: Guys, we're
17 rebooting, starting again. State
18 your question, Mr. Lewis. There
19 was some confusion. Restate your
20 question. If you want to read
21 something, go ahead.

22 MR. LEWIS: I'm asking if
23 you are having technical issues,
24 because maybe that's it. I have
25 Exhibit 51 on my screen that I'm

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR: I'm looking
3 for it as well. Where is that?

4 MR. BROWN: Rod, what did
5 you just read there, buddy?

6 MR. LEWIS: I'm missing your
7 point. If you all exchanged a
8 document that I have on the
9 screen, it should be very clear
10 what I'm reading.

11 THE ARBITRATOR: Oh, I see.
12 It's in the middle of the page.
13 I missed it also, I was reading
14 the top one, and I didn't
15 understand it was the middle one
16 you were reading.

17 MR. LEWIS: Are we all on
18 the same page now?

19 THE ARBITRATOR: We are now,
20 I think.

21 Do you see it, Mr. Brown?

22 MR. BROWN: My apologies.

23 MR. LEWIS: Okay.

24 Q. So, Mr. Torello-Viera, you write
25 on November 4, 2014, to Dr. Hamad, "It

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 sharing. Is that what you're
3 seeing?

4 MR. BROWN: Mr. Farber, give
5 me a second.

6 MR. LEWIS: I'm going to
7 un-share and let's get this
8 squared away now. Are you all
9 not seeing what I'm seeing on my
10 screen?

11 MR. BROWN: We are seeing
12 it, and I just want to verify,
13 Mr. Lewis, that this is the exact
14 copy of Exhibit 51.

15 THE ARBITRATOR: Mr. Crowe,
16 we're going to have to do
17 one-on-one not two-on-one,
18 because otherwise Mr. Shah is
19 going to jump in and it will get
20 a bit chaotic.

21 So it looks like Mr. Brown
22 is doing a fine job, so let's let
23 him continue. Otherwise, it gets
24 out of hand and it's not fair to
25 Mr. Lewis. Mr. Brown, do you

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 have a point you want to make or
3 can we continue with the
4 examination?

5 MR. LEWIS: I have to tell
6 you, I'm confused why we're
7 pausing here.

8 THE ARBITRATOR: I think
9 that they don't see the document
10 on their screen that you're
11 referring to.

12 MR. LEWIS: Did you see it,
13 Mr. Farber?

14 THE ARBITRATOR: I did see
15 it. I no longer see it.

16 MR. LEWIS: I took it down
17 so we could square this away.

18 THE ARBITRATOR: So why
19 don't you put it back up, and
20 then you can restate the
21 question, and we can get to work
22 it away.

23 And guys, sometimes with
24 Zoom this will happen. So we'll
25 take it slow and we'll get it

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 telling Dr. Hamad in this e-mail that
3 you were forwarding a copy of the lease
4 agreement between Sarah and Forum that
5 was sent to the prospective tenant; you
6 see that, right?

7 A. Yes.

8 Q. You testified earlier that you
9 didn't know who the prospective tenant
10 was; do you recall that?

11 A. Yes. And I don't remember.

12 Q. That's different. You said you
13 didn't know who the prospective
14 tenant -- Mr. Torello-Viera, you were
15 saying you weren't part of this
16 conversation.

17 THE ARBITRATOR: Is that a
18 question, sir?

19 Q. The question is how can you
20 reconcile that with this e-mail?

21 A. I don't remember.

22 Q. Does this refresh your
23 recollection, Mr. Torello-Viera, that
24 not only did you agree to participate
25 in finding a new tenant to take over

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 done.

3 MR. LEWIS: Okay.

4 Gentlemen, this is Exhibit 51.

5 If it will help you for me to
6 give you the bates number, I'm
7 happy to do so.

8 MR. BROWN: Thank you,
9 Mr. Lewis.

10 MR. LEWIS: Sure. That is
11 Claimants 723, Exhibit 51, and
12 I'm about to share the screen
13 again. Okay?

14 MR. BROWN: Okay.

15 MR. LEWIS: Okay.

16 MR. BROWN: Thank you.

17 MR. LEWIS: We're squared
18 away.

19 Q. So, again, Mr. Torello-Viera,
20 we've spent some time reading this
21 paragraph now, but you understand that
22 you are e-mailing Dr. Hamad and you are
23 saying that you have -- hold on. Okay.

24 So here, Mr. Torello-Viera, you
25 are -- Mr. Torello-Viera, you're

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 the store, you found someone; does that
3 refresh your recollection?

4 A. No.

5 Q. It doesn't. It says right here
6 that you forwarded the lease agreement
7 between Sarah LLC and Forum Shop that
8 was sent to the prospective tenant, and
9 you were hopping to have the tenant
10 some time next week and will keep them
11 abreast; do you see that?

12 A. I see, but I don't remember.

13 Q. Well, that's different then
14 saying you didn't find a prospective
15 tenant because, clearly, you did.

16 We go on in the e-mail and you
17 have Dr. Hamad responding to you, Dr.
18 Amar Hamad responding to you, "Great
19 talking to you this morning." Do you
20 remember having a conversation with Dr.
21 Amar Hamad on December 1, 2014; do you
22 recall that?

23 MR. BROWN: I'm going to
24 object to that question because
25 there was a statement then a

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 question, but --

3 THE ARBITRATOR: It's
4 overruled. You can answer.

5 Do you remember a
6 conversation on the morning of
7 December 1, 2014, with Dr. Amar
8 Hamad?

9 THE WITNESS: On the e-mail
10 that I read, yes.

11 Q. Do you have an independent
12 recollection of that, Mr.
13 Torello-Viera?

14 A. Say it again, sorry.

15 Q. Do you have an independent
16 recollection of that, sir?

17 A. It tells me that we -- Pal
18 Zileri was taking over the management
19 --

20 Q. I'm asking you, sir, to talk
21 about --

22 THE ARBITRATOR: He thinks
23 you're asking to him to tell him
24 what the conversation was.

25 He just wants to know if you

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 testified earlier that you were
3 committed to making sure everyone did
4 well, that Forall was committed to
5 making sure everyone did well,
6 collectively.

7 If that prospective tenant
8 didn't come to bear to operate the
9 store because you didn't get a
10 brokerage fee, would that be consistent
11 with that commitment to making sure
12 everyone did well?

13 MR. BROWN: Objection.

14 Q. Mr. Torello-Viera --

15 THE ARBITRATOR: Sustained,
16 Counsel. I also lost the
17 question about the consistency
18 part. Why don't you rephrase it?

19 Q. If you did not bring a
20 prospective tenant to operate the store
21 in November of 2014 because the doctors
22 refused to pay a brokerage fee, would
23 that be fair in your mind, sir?

24 A. No.

25 MR. BROWN: Objection.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 remember the conversation. Do
3 you remember it?

4 THE WITNESS: No, I don't
5 remember a conversation. But it
6 must have happened since we have
7 this e-mail.

8 THE ARBITRATOR: Okay.

9 Q. Okay. So this is since between
10 November 4, 2014, when you had
11 identified a prospective tenant. Now,
12 were at December 1, 2014, and Dr. Amar
13 Hamad is discussing Pal Zileri taking
14 over the store; do you see that?

15 A. Yes.

16 Q. What happened to the prospective
17 tenant between November 4, 2014, and
18 December 1, 2014?

19 A. It is clear to me that it didn't
20 materialize.

21 Q. And did that have anything to do
22 with Dr. Bachar Hamad's refusal to pay
23 the brokerage fee?

24 A. I don't remember.

25 Q. You don't remember. You

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR: He
3 answered. All right. Let me
4 just remind you, Mr.
5 Torello-Viera, you've got two
6 very good lawyers.

7 If you're going to jump in
8 with the answer, you've got to
9 give them the opportunity to say
10 "objection," because they're
11 trying to help you, and so I've
12 heard the answer.

13 MR. LEWIS: I did not,
14 though, Mr. Farber.

15 THE ARBITRATOR: It was
16 "no".

17 Q. I want to take you back to this
18 e-mail on December 1, 2014. Here, Dr.
19 Amar Hamad writes to you, "This e-mail
20 is to confirm we are very interested
21 for Pal Zileri to take over the
22 management of the Las Vegas store."
23 Let me pause there. Was it Forall --
24 your idea for Pal Zileri to take over
25 the store or was it the doctor's idea?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 MR. BROWN: Do you recall?

3 MR. LEWIS: We're getting
4 some coaching that I hear.

5 Mr. Torello-Viera, if he was
6 alone, he would have to figure
7 out how to answer, like our
8 witnesses had to figure out how
9 to answer.

10 MR. BROWN: I object
11 strenuously to that
12 characterization. You already
13 asked him about the e-mail. He
14 said he didn't recall the
15 conversation, but it must --

16 MR. LEWIS: If you allow him
17 to answer my question --

18 THE ARBITRATOR: Gentlemen,
19 we'll need to take one at a time
20 or we will not take. So we're
21 going to -- we're going to,
22 again, reboot. Guys, this
23 doesn't help me.

24 Ask your question, and if
25 you have an objection, Mr. Brown,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 THE ARBITRATOR: What is the
3 objection?

4 MR. BROWN: This e-mail --
5 he's asking if that language from
6 Amar Hamad gives him a better
7 indication of whose idea it was.

8 MR. LEWIS: It's a yes-or-no
9 question.

10 THE ARBITRATOR: Mr. Lewis,
11 let him finish.

12 Go ahead, Mr. Brown.

13 MR. BROWN: He indicated he
14 doesn't recall the conversation,
15 but it happened, obviously,
16 because there was an e-mail
17 around that time, so that's his
18 recollection about this.

19 THE ARBITRATOR: I don't
20 understand. What's your
21 objection, Mr. Brown?

22 MR. BROWN: I'll withdraw it
23 if you don't understand it.

24 THE ARBITRATOR: Okay. You
25 can answer the question. Guys,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 just say "objection," and then
3 I'll ask you what it is. All
4 right? Let's kind of go orderly
5 here, and I just want to hear
6 from the witness in response
7 unless you have an objection.

8 Restate your question,
9 Mr. Lewis.

10 Q. Mr. Torello-Viera, was it
11 Forall's idea or was it the doctor's
12 idea for Forall to come in and operate
13 the store?

14 A. It was a mutual agreement.

15 Q. Mutual agreement. If the e-mail
16 says here, "It was good talking to you
17 this morning. This e-mail is to
18 confirm that we are interested for Pal
19 Zileri to come over and take over the
20 management of the store." Do you see
21 that?

22 A. Yes.

23 Q. Does that give you a better
24 indication as to who proposed the idea?

25 MR. BROWN: Objection.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 this is not rocket science. He's
3 using documents to try to ask
4 this witness if he remembers
5 whose idea it was for Pal Zileri
6 or Forall to take over the store
7 and that's it.

8 Does this jog your memory,
9 Mr. Torello-Viera, as to who
10 first had the idea for Forall to
11 take over the store?

12 THE WITNESS: To a certain
13 extent, yes.

14 THE ARBITRATOR: Okay. Then
15 what's your memory? What's your
16 better memory right now.

17 THE WITNESS: That to a
18 certain extent, yes. We proposed
19 that in order to assist the
20 doctors. Otherwise, it will have
21 to take and run the store since
22 January 1st.

23 THE ARBITRATOR: Okay. So
24 when you say, "We proposed that,"
25 does that mean you proposed it?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 THE WITNESS: Yes.

3 THE ARBITRATOR: Okay.
4 That's fine. Okay. You've got
5 your testimony. Mr. Lewis, go
6 ahead.

7 MR. LEWIS: Thank you.

8 Q. I want to clarify though -- I'll
9 come back to that. So after
10 considering your idea of Forall coming
11 in and operating the store, Dr. Amar
12 Hamad writes back with some terms that
13 he'd like to see, "At the end of the
14 first year of the agreement, you will
15 let us know if you would like to take
16 over the entire lease, which would be a
17 six-year agreement. If not, then Sarah
18 LLC will have a six-month period to
19 turn the store over to Simon"; do you
20 see that?

21 A. Yes.

22 Q. Okay. So you understand then
23 that Sarah is asking for a six-month
24 notice period for the purpose of
25 turning the store back over to Simon.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 where you write, "There's no way we can
3 turn the store back in. It would
4 damage our brand. There's no way we
5 can allow you to turn the store back
6 over to Simon. It would have
7 detrimental affects on our brand." Did
8 you write anything like that?

9 A. I deferred to our legal
10 counsel --

11 THE ARBITRATOR: The
12 question is: Did you write
13 anything like that? Either you
14 did or you didn't. And the
15 answer is pretty obvious because
16 I'm reading it.

17 MR. LEWIS: I'd like an
18 answer for the record.

19 THE ARBITRATOR: Did you
20 write anything like that or not?

21 THE WITNESS: No.

22 THE ARBITRATOR: Okay. Next
23 question.

24 Q. Later in the e-mail Mr. -- Dr.
25 Hamad asks you if you had time for a

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 You understand that, right?

3 A. Yes. But this is not correct.

4 THE ARBITRATOR: The
5 question is, "Did you understand
6 it?" The answer is, "Yes."
7 That's good enough. Let's --
8 next question.

9 Q. Next question is confirm that
10 this is on December 1, 2014, correct?

11 A. Yes.

12 Q. There's an e-mail that you write
13 on December 3rd, which is in response
14 to this e-mail from Dr. Amar Hamad to
15 you, asking for this six-month notice
16 appeared to be included in the proposal
17 that you had if Forall operated the
18 store, and you write, "Dr. Amar, thank
19 you for your time dedicated to our
20 conversation this morning. As agreed,
21 you've given mandate to our counsel to
22 deal with yours on the management
23 agreement." Do you see that?

24 A. Yes.

25 Q. Can you show me anywhere in here

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 call; and do you recall having another
3 conversation with him on December 5,
4 2014?

5 A. If we made an appointment, I
6 guess we had the conversation.

7 Q. Do you have an independent
8 recollection of that conversation?

9 MR. BROWN: He just said he
10 didn't, but you cut him off when
11 he said he doesn't recall.

12 THE ARBITRATOR: I heard it.
13 Next question.

14 MR. LEWIS: I want to make
15 sure this is working properly, so
16 please let me know if you see the
17 management agreement on the
18 screen.

19 MR. BROWN: Yup.

20 THE ARBITRATOR: We've got
21 it.

22 MR. LEWIS: I want to make
23 sure before I spend any time on
24 the document.

25 Q. So, Mr. Torello-Viera, do you

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 see that this is management agreement
3 between Forall USA and Sarah LLC dated
4 March 15, 2015?

5 A. Isn't it the 7th of February?

6 Q. I'm sorry. It's dated the 9th
7 of February, should be effective as of
8 March 15, 2015. So you recognize this
9 document?

10 A. Yes.

11 Q. And I will remind you what we
12 just spoke about and the conversation
13 you had December 2014 where Sarah were
14 asking for a six-month notice period
15 for the purpose of turning the store
16 back into Simon; do you recall us
17 talking about that before?

18 A. Yes, I saw the e-mail.

19 Q. Okay. And so these -- please
20 take a look at 2.1 in the management
21 agreement; do see you this?

22 A. Yes.

23 Q. It says, "Forall shall assume
24 exclusive management of and control of
25 the business effective no later than

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. And, again, do you recall that
3 the purpose of the six-month notice
4 period was for Sarah to be able to turn
5 the store back over to Simon; do you
6 remember?

7 A. No.

8 Q. That's inconsistent with --
9 that's okay. We'll come back to that.

10 THE ARBITRATOR: Counsel,
11 was that a question?

12 MR. LEWIS: No. I decided
13 I'll come back to it at another
14 document.

15 THE WITNESS: I have this in
16 my notes for later.

17 Q. So, Mr. Torello-Viera, we've
18 seen the six-month notice period make
19 its way through e-mails into the
20 management agreement, correct?

21 A. No.

22 Q. It was picked up in the
23 management agreement, was it not?

24 A. No. Again, I had it on my notes
25 later, since I cannot talk now.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 March 15, 2015, for a term of 18
3 months, initial term. Forall shall at
4 its sole discretion advise Sarah on or
5 before March 1, 2016, whether it
6 intends to take over the lease and
7 business and/or otherwise terminate the
8 management agreement at the end of the
9 initial term." Do you see that?

10 A. Yes.

11 Q. And the initial term was
12 18 months which would have ended in
13 September of 2016, correct?

14 A. Yes.

15 Q. Do you recognize that in here
16 "Forall has agreed to give six months
17 notice whether it intends to take over
18 the lease and business and/or otherwise
19 terminate management agreement at the
20 end of the initial term." You see
21 that, right?

22 A. Yes.

23 Q. And you signed this on behalf of
24 Forall USA?

25 A. Yes.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. I don't know what you mean by
3 that, sir. I'm asking a yes-or-no
4 question. Was the six-month notice
5 period reflected in the management
6 agreement?

7 THE WITNESS: I'm asking,
8 Mr. Farber, if I can explain this
9 point.

10 THE ARBITRATOR: That's a
11 different question. Mr. Lewis,
12 you asked him if the six-month
13 notice that was referred to in
14 the communications was reflected
15 in the management agreement.
16 That's one question. Now you
17 just asked a different question,
18 which is: Is there a six-month
19 notice provision in the
20 management agreement?

21 MR. LEWIS: I don't have any
22 problem getting a yes or no to
23 that question.

24 THE ARBITRATOR: Pick one of
25 the questions and then we'll get

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 an answer. Okay?

3 Q. Is there a six-month notice
4 provision in the management agreement,
5 Mr. Torello-Viera?

6 A. Yes. But there's more to it.

7 THE ARBITRATOR: Okay.

8 Q. And Mr. Torello-Viera, Forall
9 did, in fact, give the six-month notice
10 to Sarah when they decided not to
11 continue on after the initial term,
12 correct?

13 A. Correct.

14 Q. So we have the six-month notice
15 period requested in the e-mails,
16 correct? That's a "yes" or "no," sir.

17 A. Can you repeat the question?

18 Q. Sure. We have a six-month
19 notice period requested in the e-mails
20 that we reviewed, correct?

21 A. Yes.

22 Q. You have a six-month notice
23 period reflected here in the management
24 agreement, correct?

25 A. As noted yes.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 A. Yes.

3 Q. And do you recall whether that
4 was a current map or was that the map
5 back in 2015?

6 A. The map that we used today?

7 Q. That's correct.

8 A. Is from the website, so it's to
9 date map.

10 Q. So that doesn't reflect the
11 layout in the summer of 2015, right?

12 A. From my recollection, the vast
13 majority of the tenants that was there
14 at that time are still there now.

15 Q. Mr. Torello-Viera, that was a
16 yes-or-no question. Whether that map
17 that we saw today reflects the layout
18 of 2015?

19 THE ARBITRATOR: Counsel,
20 "reflected" is a hard word. I
21 think the witness has answered
22 properly. Let's move on.

23 Guys, look, I can, you
24 know, act as referee with this
25 jabbering back and forth. I'm

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. And we had six-month notice
3 provided to Sarah when Forall made its
4 decision not to continue on after the
5 initial term, correct?

6 A. Yes. With the letter that we
7 sent you.

8 Q. And that is absolutely right.
9 But you knew the importance of the
10 six-month notice period. You adhered
11 to this provision in the contract and
12 its consent six-month notice, correct?

13 A. Yes. With also the provisions
14 that we added to the letter.

15 THE ARBITRATOR: All right.

16 I got the answer. It's yes.

17 Q. Mr. Torello-Viera, you testified
18 earlier about the time period when
19 Simon suggested that Forall move the
20 store and that was in the summer of
21 2015, correct?

22 A. Yes.

23 Q. And you testified and your
24 counsel showed an interactive map of
25 the Forum malls; do you recall that?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 really trying to finish by

3 tomorrow. We allocated four
4 days. I don't want to add more
5 days and more expense.

6 Let's try to focus on the
7 real issues, because this kind of
8 stuff is not going to just help
9 me decide. So let's go with it.
10 All right.

11 Mr. Lewis, next question.

12 Q. I was asking about the prospect
13 of moving the store as it was presented
14 to you by Simon, and you testified that
15 the location that was -- was suggested
16 for you to move wasn't desirable; do
17 you recall that?

18 A. Yes.

19 Q. And my -- am I correctly
20 summarizing your testimony about that?

21 A. Yes.

22 Q. And you said the location that
23 you were in was desirable. It was
24 better because it was around a more
25 higher end brands, etcetera?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 A. Yes.

3 Q. And the point I'm trying to make
4 with these questions -- first, if that
5 location was so desirable and it was
6 right amongst the high-end brand,
7 Gucci, Versace, etcetera, why could the
8 store not perform in that location?

9 A. I need a yes-or-no question.

10 THE ARBITRATOR: No. The
11 question is why, so you can
12 explain why.

13 A. Because -- trying to recover the
14 damages that was previously done to the
15 brand by who managed the store before
16 us.

17 Q. Mr. Torello-Viera, you
18 understand that the store wasn't
19 profitable from the beginning, right?
20 I mean, you understand the sales
21 figures in 2012, don't you?

22 THE ARBITRATOR: Counsel,
23 your question of why the store
24 couldn't perform, I don't think
25 you specified a time period, so I

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 don't think the witness is really
3 questioning which time period
4 you're talking about or you
5 talking about the whole tenure of
6 the store.

7 MR. LEWIS: Thank you,
8 Mr. Farber.

9 Q. I meant throughout the whole
10 tenure, but I can be more specific.
11 Why didn't the store, to the extent you
12 understand the answer, why didn't the
13 store perform in 2012 when it was in
14 this prime location?

15 MR. BROWN: Well --

16 A. I can only guess. I was not
17 there.

18 Q. And let's talk about when Forall
19 was operating the store in 2015 in a
20 portion of 2016, you were still in this
21 prime location around all of the high
22 end stores, correct?

23 A. Yes.

24 Q. Do you have an appreciation for
25 how much the store did in sales while

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 Forall operated the store?

3 A. Yes.

4 Q. And how do you -- how are you
5 aware of the sales that the store did?
6 How did you come to understand that
7 information?

8 A. I don't understand the question.

9 Q. Sure.

10 A. If you can help me.

11 Q. Absolutely. So you say that you
12 are aware of the sales Forall -- of
13 Forall in the Las Vegas store between
14 2015, 2016. My question was just how
15 did you arrive at that knowledge?

16 A. I had access to the figures.

17 Q. Have you reviewed those figures
18 in preparation for the arbitration?

19 A. Yes.

20 Q. Okay. Do you know whether your
21 counsel produced the sales that you
22 reviewed in preparation for this
23 arbitration?

24 A. Yes.

25 Q. They did?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 A. I'm sorry.

3 MR. BROWN: Objection to the
4 limited -- the limited value of
5 asking this witness, who is no
6 longer with the company, that
7 question.

8 THE ARBITRATOR: Either he
9 knows or he doesn't know. Do you
10 know if the -- if Forall's lawyer
11 produced those financial
12 documents for the period prior to
13 the time you were employed?

14 THE WITNESS: I don't know.

15 THE ARBITRATOR: You don't
16 know. Okay. Next question.

17 Q. Do you know if -- but you did
18 review the documents? You reviewed the
19 sales figures in preparation for your
20 arbitration, that was your testimony?

21 A. Yes.

22 Q. And so can you explain for
23 Arbitrator Farber what those sales were
24 in, let's just say, April of 2015?

25 A. I don't have them on top of my

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 head, I mean.

3 Q. Is there a document that would
4 refresh your recollection? Would that
5 help to see Simon's production,
6 including the sales figures for that
7 year?

8 A. There is a report that Simon is
9 producing.

10 Q. Okay. So that's what you
11 reviewed, a report from Simon?

12 A. I reviewed the figures. I can't
13 tell you whether it was that report or
14 something else.

15 Q. Okay. I'll show you a Simon
16 report, and you can let me know if this
17 is what you reviewed; is that fair?

18 MR. BROWN: Is it in
19 evidence?

20 MR. LEWIS: It's not in
21 evidence.

22 THE ARBITRATOR: Can I just
23 ask you, Mr. Lewis, what are we
24 accomplishing to get me to know
25 the figures of April of '15,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 let's say they were wonderful,
3 let's say they were terrible, how
4 does that bear on what I have to
5 decide in this matter?

6 MR. LEWIS: Great question,

7 Mr. Farber. Mr. Torello-Viera
8 also testified earlier, and I'm
9 going to ask him about this, that
10 Simon imposes minimum revenue
11 requirements on high-end stores,
12 and I'm going to ask him what
13 that revenue requirement was for
14 the Forall store, and if they met
15 it under Forall's operation, so
16 it's quite germane.

17 THE ARBITRATOR: I'm not
18 quite sure that he so testified.
19 I don't recollect that, but if he
20 did, why not get to that? So get
21 to it, and ask him that.

22 You know, asking him what he
23 reviewed in preparation since
24 April '15, and then fighting over
25 whether it's a document in

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 evidence doesn't advance the
3 cause, so let's get right to it.
4 All right?

5 Do you know if Simon had
6 some minimum requirement in terms
7 of revenue for the high-end
8 stores, Mr. Torello-Viera?

9 THE WITNESS: If I can put
10 it in contents of what I said
11 this morning, I said that the new
12 location that they offered to
13 us --

14 THE ARBITRATOR: I'm aware
15 of what you said this morning,
16 which they do for their worst
17 location stores. You said that.
18 I got it.

19 What he's asking you
20 general is: Is there some sort
21 of requirement that Simon has, if
22 you know that?

23 THE WITNESS: They had sales
24 minimums.

25 THE ARBITRATOR: Next

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 question, Mr. Lewis.

3 Q. What was the minimum sales
4 requirement for the Forall store?

5 A. I don't remember.

6 Q. You remember the sales figures?
7 You just testified that you had that
8 information, but you don't remember the
9 minimum revenue threshold that Simon
10 was requiring?

11 A. Yes.

12 Q. Who would have that information?

13 A. I don't know.

14 Q. Say that again, please.

15 A. I left the company four years
16 ago, so I'm not privy to this
17 information. And as I left, I
18 surrendered all the confidential
19 information that I had as to my
20 contract.

21 Q. You surrendered the confidential
22 information to whom, sir?

23 A. To Forall.

24 Q. To whom at Forall?

25 A. Marco Sanavia, the corporate

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 head of HR.

3 Q. Marco Sanavia, anyone else?

4 A. I don't remember.

5 Q. Do you remember having this
6 conversation with Palma Settimi?

7 A. I don't remember.

8 Q. Do you share the minimum revenue
9 requirement that Simon was requiring
10 from Forall with anyone else from
11 Forall including Palma Settimi?

12 THE ARBITRATOR: Hang on.

13 This is a little different.

14 MR. BROWN: Objection.

15 THE ARBITRATOR:

16 Mr. Torello-Viera, we have a
17 lease, we know what the lease
18 said. Do you know if that lease
19 required some minimum revenue
20 requirement that Simon required
21 of Sarah.

22 THE WITNESS: I don't
23 remember, sir.

24 THE ARBITRATOR: Okay.
25 Counselor, the lease is in

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 requirement in the lease. If
3 there's none --

4 MR. LEWIS: Mr. Farber --

5 THE ARBITRATOR: If there's
6 none then I don't know what we're
7 doing.

8 MR. LEWIS: Mr. Farber.

9 THE ARBITRATOR: Go ahead.

10 MR. LEWIS: With all due
11 respect.

12 THE ARBITRATOR: Forget the
13 respect. Let's get to the point.

14 MR. LEWIS: I believe you're
15 missing the nature of my
16 question.

17 THE ARBITRATOR: Okay.

18 MR. LEWIS: It is not asking
19 Mr. Torello-Viera to confirm that
20 the Sarah lease was --

21 THE ARBITRATOR: Hang on.
22 We lost Mr. Brown.

23 MR. BROWN: I was just
24 grabbing a breath mint.

25 MR. LEWIS: It's been a lot

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 evidence. Is there a clause in
3 the lease that has such
4 requirement?

5 MR. LEWIS: Mr. Farber, I
6 appreciate your question, but
7 that's not where it was emanating
8 from, not the lease. This is
9 something that Mr. Torello-Viera
10 testified that --

11 THE ARBITRATOR: No. He did
12 not so testify. What he said
13 this morning was that for the
14 less desirable locations, that
15 they would have a lease that
16 would be based upon a percentage
17 of sales, but this one was not a
18 lease desirable location. For
19 the Forall store, he testified
20 was a highly desirable location
21 in this mall. That's my memory
22 of the testimony.

23 Therefore, I'm asking you,
24 because it's in evidence, if you
25 know that there is such a

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 of back and forth, and it's been
3 disjointed, so I understand why
4 it may be unclear. Mr.
5 Torello-Viera has testified, and
6 you can ask Maggie to read it
7 back, that there was a minimum
8 revenue requirement in this
9 instance that was imposed by
10 Simon.

11 THE ARBITRATOR: I've not
12 heard that. So when you say "in
13 this instance," which instance?
14 In the instance? Are you talking
15 about the lease to Sarah?

16 MR. LEWIS: This is new
17 information to me, Mr. Farber,
18 and it's new information to you.

19 Mr. Torello-Viera has just
20 testified that there was a
21 minimal revenue requirement Simon
22 was imposing on the Forall -- on
23 the Las Vegas store. That's what
24 he testified to.

25 THE ARBITRATOR: Mr. Lewis,

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CROSS-EXAMINATION MR. TORELLO-VIERA
I'm lost here. Landlords can impose requirements on tenants either through a lease or some building regulations.

I don't know what you're talking about. I haven't heard this witness say there was some other form of requirement. Let's ask him and clear it up.

Mr. Torello-Viera, do you know if Simon had imposed some sort of revenue requirement on Forall at any point?

THE WITNESS: No, I don't remember.

THE ARBITRATOR: Okay. Next question, Mr. Lewis.

MR. LEWIS: We have an e-mail, Mr. Torello-Viera, that I'm going to pull up and share for you, which has Simon -- let me find the e-mail now.

MR. BROWN: Is it in evidence?

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CROSS-EXAMINATION MR. TORELLO-VIERA
THE ARBITRATOR: Let him find what he needs to find, and then we'll see.

Q. In the mean time, while I find that document, Mr. Torello-Viera, are you aware of whether Forall paid rent after the first of the month while Forall was operating the store?

A. Yes. But within a reasonable time.

Q. I just asked are you aware if he paid the rent after the first of the month when it was due, sir.

THE ARBITRATOR: The answer was yes. Go ahead. Next question.

Q. Do you have an appreciation whether this happened more than once?

A. I don't remember.

Q. Did you review the payment history of the rent along with the sales figures that you reviewed?

A. No, I did not.

MR. LEWIS: Mr. Farber, may

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CROSS-EXAMINATION MR. TORELLO-VIERA
I ask for five minutes, please.

THE ARBITRATOR: Of course. Let's take five, everyone.

(Whereupon, a recess was taken at this time.)

THE ARBITRATOR: Mr. Lewis, any more questions?

MR. LEWIS: Just a few more.

Q. Mr. Torello-Viera, can you see my screen?

A. Yes, I do.

MR. LEWIS: This is Exhibit 250, everyone, and I'll start at the bottom and work my way up.

Q. It's an e-mail, if you can see, from David Hochman to Mr. John Steen, a property manager at Simon, dated January 9, 2015; do you see that?

A. Yes.

Q. A pertinent part of this e-mail is, "In lieu of your proposal, we are asking that Simon suspended its efforts to obtain a replacement tenant until

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CROSS-EXAMINATION MR. TORELLO-VIERA
January 31, 2016. There will not be a sales target which would need to be met during this period. Sarah will assess the sales performance of the store. If sales have not improved during this 12-month period, Sarah would then notify Simon to resume its search for a replacement tenant." Do you see that?

A. Yes.

Q. Does this refresh your recollection at all as to whether Simon had a minimum sales expectation to the store?

A. No.

Q. A sales target, it does not refresh your recollection?

A. No.

Q. And Simon writes, "We agree not to lease the space in 2015." Do you see that?

A. Yes.

Q. And is it your understanding that Simon was agreeing not to lease the space so that Forall could come in

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 and manage the store as of March 2015?

3 MR. BROWN: Objection.

4 THE ARBITRATOR: What's the
5 objection?

6 MR. LEWIS: I'll rephrase.

7 THE ARBITRATOR: All right.
8 It's withdrawn. Rephrase.

9 Q. Your understanding that -- your
10 testimony earlier was that Sarah had
11 reached out to Simon, asked them to
12 rescind the letter agreement; do you
13 recall that testimony?

14 MR. BROWN: I'm sorry,
15 Rodney. I don't know if that's
16 exactly what he said.

17 THE ARBITRATOR: It's more
18 or less correct. I remember it.
19 Go ahead. I can tell you what
20 the testimony was too because I
21 heard it. So go ahead. Next
22 question, Mr. Lewis.

23 MR. LEWIS: We didn't have
24 an answer to that one, Mr.
25 Farber.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. In the e-mails you write that
3 you identified a prospective tenant in
4 2014, correct?

5 A. I don't remember.

6 Q. Do we need to put the e-mails
7 back up?

8 THE ARBITRATOR: Counsel,
9 we've been through it. I read
10 the e-mails. Go ahead to
11 whatever you want to ask. Go
12 ahead.

13 MR. LEWIS: I just asked
14 what I wanted to ask, Mr. Farber.

15 THE ARBITRATOR: I didn't
16 catch it, so restate it. All
17 right?

18 MR. LEWIS: Okay.

19 Q. Here we have Mr. John Steen
20 writing back, "We agree not to lease
21 the space in 2015." Do you see that?

22 MR. BROWN: At the bottom
23 there.

24 Q. Do you see that, sir?

25 A. Yes.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. Is this consistent with -- do
3 you recall your testimony --

4 MR. LEWIS: That's okay.

5 Mr. Farber, you remember this
6 testimony.

7 Q. So Simon is not leasing the
8 space for 2015. We talked earlier that
9 although Forall had a prospective
10 tenant, you didn't bring them in at the
11 end of 2014, right?

12 MR. BROWN: Objection.

13 THE ARBITRATOR: What's the
14 objection?

15 MR. BROWN: He said he
16 didn't bring them in. I don't
17 know what that means.

18 THE ARBITRATOR: Sustained.
19 Next question. "You didn't bring
20 them in," I'm not sure what that
21 means either, so rephrase, Mr.
22 Lewis.

23 Q. You had identified a prospective
24 tenant in late 2014, correct?

25 A. I don't remember.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. Okay. And so the door is open
3 here for Forall to come back in and
4 operate the store in March of 2015,
5 correct?

6 A. And we did.

7 Q. That's a yes?

8 A. Yes, we did.

9 Q. Mr. Torello-Viera, is it your
10 understanding that Simon decided to
11 give the Pal Zileri brand store, one
12 more opportunity in 2015?

13 A. No.

14 Q. It's not your understanding?

15 A. No.

16 THE ARBITRATOR: Just give
17 me one moment. I see that my
18 assistant left the door open; I
19 just want to close it.

20 Go ahead, Mr. Lewis.

21 Q. We were talking about the space
22 that the store was in. We talked about
23 that a bit and you acknowledged that.
24 Did the Forall store -- did the Pal
25 Zileri store sell over, let's say,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 \$100,000 worth of merchandise in 2015?
3 Let me start over.

4 Do you recall what the sales
5 were on a monthly basis in 2015,
6 correct?

7 A. Roughly.

8 Q. Roughly. Did the sale -- did
9 the store sell under \$100,000 per month
10 in 2015, albeit, roughly?

11 A. I guess so. I cannot confirm.

12 Q. Okay. Did the -- the store did
13 not do, and we'll be very specific with
14 the numbers with Ms. Settimi, but -- so
15 I guess I'm asking, generally, did the
16 store perform as you expected in 2015
17 and 2016 while Forall was operating?

18 A. Yes.

19 Q. It did. Well, why didn't Forall
20 just continue on operating the store?

21 A. Because we asked for a 60 day
22 extension, and since Sarah did not
23 reply, we had to take a position --

24 Q. But, Mr. Torello-Viera, what
25 would you need an extension for? You

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 at all the different options, and
3 there was a communication open
4 with Simon when they offered that
5 space that we would then look at
6 any other possible locations that
7 they had that would be suitable
8 for us, and we haven't heard from
9 them. So there was a lot of
10 moving parts in that moment. And
11 that's why we asked for the
12 60 days, you know, extension and
13 Sarah did not reply, so refuse to
14 give us [sic].

15 THE ARBITRATOR: I didn't
16 hear you what you said, Mr.
17 Lewis. It's acting up again. I
18 can't hear you. Say it again.

19 MR. LEWIS: Can you hear me?

20 THE ARBITRATOR: You have to
21 do whatever it is again.

22 Mr. Lewis, go ahead.

23 MR. LEWIS: Can you hear me
24 now?

25 THE ARBITRATOR: Yes.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 already had 12 months of data. You
3 said the store performed up to your
4 expectations. Why would you need an
5 extension?

6 A. Because as I said this morning,
7 we were looking at the bigger picture,
8 not just Vegas. We were looking at Pal
9 Zileri worldwide and then in the U.S.

10 Q. Well, before I ask the next
11 question in this line. How was Pal
12 Zileri brand doing worldwide?

13 A. Can I add something to this? I
14 think I said that --

15 Q. Mr. Torello-Viera, I don't have
16 a question pending right now.

17 THE ARBITRATOR: No. You
18 asked, you know, why they didn't
19 continue. So if he wants to add
20 why they didn't continue, you can
21 do so. Go ahead.

22 Mr. Torello-Viera, why
23 didn't Forall want to continue?

24 THE WITNESS: Again, as I
25 said, you know, we were looking

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 Q. I was asking, and forgive me if
3 I'm being repetitive, I can't recall
4 when the sound when out. I was asking
5 you -- you had 12 months worth of data
6 and you had 25 years worth of
7 experience, why would you need an
8 extension to determine whether to
9 continue on operating the store?

10 A. I would repeat what I just said,
11 because we were looking into any
12 possible opportunity in accordance, you
13 know, with our global repositioning of
14 the brand and locally in the U.S.

15 Q. How was the brand performing
16 globally in 2016?

17 A. I left in 2016, so I do not know
18 numbers. I cannot answer that
19 question.

20 Q. From your perspective, how was
21 the brand performing when you left?

22 MR. BROWN: Can I --

23 THE WITNESS: I can answer
24 this.

25 MR. BROWN: Well, objection.

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CROSS-EXAMINATION MR. TORELLO-VIERA
Relevance, but --

THE ARBITRATOR: We'll let
him answer. How was the brand
performing around the time you
left, sir?

THE WITNESS: The company,
was recovering, growing.

The ARBITRATOR: Okay.
Q. It had taken a down turn for it
to be recovering; is that safe to say?

A. I think the answer is in the
fact that the company was sold in 2014.

Q. You're saying that the
company's -- I'll characterize it as --
poor performance led to the sale in
2014; is that your answer?

A. I think I gave you already
information, you know, beyond my
knowledge, because we're talking about
situation that were prior to my arrival
[sic]. I came on board when the
company was sold.

Q. I understand. You just included
that sale as part of your answer as to

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CROSS-EXAMINATION MR. TORELLO-VIERA

THE ARBITRATOR: Mr. Brown,
you don't have to argue further.
Sustained. Next question.

Q. Mr. Torello-Viera, you testified
about damages part of cost, etcetera;
do you recall that?

A. Yes.

Q. Who were your competitors in the
United States? I know you spoke to
that briefly, but can you expand on who
your competitors are?

A. Luxury high-end apparel and
clothing menswear. If you want some
names --

Q. Will you, please.

A. Zegna, Canali, Corneliani,
Isaia.

Q. Can you think of any others?

A. Ralph Lauren Purple Label, to a
certain extent. Samulesohn in Canada.
And I'm talking about just, you know,
the tailor clothing. Paul Stewart,
Boglioli, I think that should give a
pretty good picture of what -- the

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CROSS-EXAMINATION MR. TORELLO-VIERA
whether the company was recovering from
the down turn.

THE ARBITRATOR: Mr. Lewis,
I don't understand how any of
this is relevant to what I have
to decide in this case. Why
don't we move on.

Q. Mr. Torello-Viera, isn't it
possible that the new store, the
different store location, could have
been exactly what the brand needed?

A. No. Otherwise, I would have
taken it.

Q. Well, it would have been -- rent
would have been a percentage of sales,
correct?

A. Yes.

Q. That would have dramatically
reduced your expenses, at least, it
would have done that, right?

MR. BROWN: Mr. Farber,
objection. The -- the rent is
not an element of damages in this
case for either side.

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CROSS-EXAMINATION MR. TORELLO-VIERA
arena that Pal Zileri is competing.

Q. Okay. Would stores -- would
brands like Brooks Brothers be a
competitor or is -- what is your --
what do you think about that?

A. I don't know how privy you are
to Brooks Brothers, but they have three
collections; good, better, and best.

Pal Zileri would be competing
with the better and best. They're
chunk of the business is the good one.

Q. Thank you for that. And what is
your background in accounting, Mr.
Torello-Viera?

A. I have a major in management.

Q. You have a bachelor's in -- you
have a bachelor's in management?

A. I'm not a CPA, that's for sure,
and I'm not a lawyer.

Q. Okay. Do you have -- do you
have any post-graduate degrees?

A. No. I'm not sure why you asking
me these questions.

MR. BROWN: I'll handle

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 that. You answer the questions.

3 Q. How much are commissions as
4 percent of sales in Pal Zileri stores?

5 MR. CROWE: Objection. Are
6 you talking about a particular
7 store? I just want him to
8 understand the question?

9 MR. LEWIS: I thought we
10 we're just going to have one of
11 Mr. --

12 THE ARBITRATOR: I think
13 this deals now with damaged, so
14 we're going to hear from Mr.
15 Crowe.

16 Mr. Crowe, you said
17 objection, but I also couldn't
18 hear, like Mr. Lewis, so say
19 again what's the objection?

20 MR. CROWE: I think he asked
21 in the Pal Zileri store, so I'm
22 trying to understand if he's
23 talking about stores worldwide or
24 the U.S., or is there some focus
25 to the question, in other words,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 THE WITNESS: It depends on
3 the salesperson, you know, how
4 much you give as a fix, and how
5 much is the commission, and then
6 bonus kick in, and there's a lot
7 of variables.

8 Q. Could you give us a range as to
9 a lower commission and a higher
10 commission for a high degree
11 salesperson?

12 A. I can tell you what can be the
13 cost. I can give you a ballpark of
14 what can be a cost of how much a
15 salesperson can make.

16 THE ARBITRATOR: That's what
17 he's asking for.

18 A. A good salesperson can easily
19 make 150 to 200,000.

20 MR. CROWE: Can I just note
21 an objection to relevance.

22 There's no indication that
23 commissions has anything to do
24 with this location, and the store
25 we're talking about in the

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 context?

3 THE ARBITRATOR: Overruled.
4 Depending upon his answer, if
5 it's still unclear, then you can
6 clarify it when you ask him
7 questions again.

8 You can answer the question.

9 Restate it, Mr. Lewis.

10 Q. How much were commissions as to
11 percentage of sale, and I'll say in the
12 Las Vegas store, to the extent you can
13 recall?

14 A. I don't remember it. I should
15 have to go over, you know, every single
16 employment agreement that I did. I
17 don't have it on top of my head.

18 And it varies from the store,
19 the level, and I would say, first and
20 foremost, you know, what the pay degree
21 of the -- of the salesperson that you
22 bring in.

23 THE ARBITRATOR: In other
24 words, it varies depending upon
25 the salesperson?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 economic analysis. Maybe there's
3 some ulterior motive.

4 THE ARBITRATOR: No.
5 Overruled. He testified
6 generally, and he can give us
7 information on this. What's the
8 range? And he asked you about
9 the Las Vegas store, if you know
10 what's the range.

11 THE WITNESS: A good
12 salesperson can make 150 to
13 200,000.

14 THE ARBITRATOR: He meant
15 the range of percentage for the
16 commission.

17 THE WITNESS: It can go from
18 five percent and up.

19 THE ARBITRATOR: Up to what?

20 THE WITNESS: It can go to
21 10 percent, 12 percent and up.
22 It depended, also, the bonus that
23 you calculate.

24 THE ARBITRATOR: Okay. Next
25 question, Mr. Lewis.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 Q. How are bonuses calculated? Is
3 a percentage of the overall sales or
4 how are they calculated to the extent
5 you recall?

6 THE ARBITRATOR: Where are
7 we going, Mr. Lewis? Why is this
8 relevant to what I have to
9 decide?

10 MR. LEWIS: It's relevant to
11 damages that Mr. Torello-Viera
12 testified to generally earlier.
13 I've just about four more if you
14 all will indulge me.

15 THE ARBITRATOR: Relevant to
16 damages?

17 MR. LEWIS: That's correct.
18 By the time I could have --
19 really, I've got just a few more.

20 THE ARBITRATOR: Go ahead.

21 Q. How much in total annual cost
22 has Forall incurred for marketing and
23 advertising, as far as you can recall?

24 A. I have to look at the PNL. I
25 don't remember off the top of my head,

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 Like Forall is buying the fabric. And
3 the one that you usually buy the finish
4 product are shoes, belts and leather
5 goods because it's a totally different
6 type of production set up.

7 THE ARBITRATOR: All right.

8 Q. Do you know what Forall's
9 operating costs are as a percentage of
10 sales for its own manufacturing
11 facilities?

12 MR. CROWE: Could you repeat
13 that question?

14 Q. Do you know what Forall's
15 operating costs are as a percentage of
16 sales for its own manufacturing
17 facilities?

18 A. I need you to be more specific,
19 because I need to make sure that I give
20 accurate answer that I can [sic].

21 Q. I'll move on. I'll ask that of
22 Ms. Settimi tomorrow. Do you know if
23 an inventory list that you described
24 earlier in your testimony was provided
25 for this arbitration?

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 but Ms. Settimi has all the
3 information.

4 Q. Okay. So I can direct those
5 questions to Ms. Settimi?

6 A. I can tell you that when we
7 started we had a global budget that was
8 important then. That's what I can tell
9 you.

10 Q. Okay. You testified earlier
11 that some of the items that you sell,
12 you manufacture -- Forall manufactures
13 itself and others are manufactured in
14 other facilities. Can you speak to the
15 percentage of product sold by Sarah,
16 particularly, that was manufactured by
17 Forall versus manufactured by other --
18 by others?

19 A. The vast majority is made -- can
20 I say that internally, so by Forall.
21 The -- part of it is done is
22 100 percent internally. Meaning, that
23 you receive the fabric and you do the
24 CMP, cut make and trim, or you buy the
25 fabric and you give out only the CMP.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 You were talking about when you
3 had to shut down the store, etcetera,
4 and there was an inventory list. Do
5 you know if that was provided for this
6 arbitration?

7 A. As I said, sir, before I did
8 inventory, I was leading the inventory
9 account. That, again, in 2016 I left,
10 and so I can't give you any additional
11 information after that.

12 Q. Do you know, specifically, how
13 much the inventory from the Las Vegas
14 cost Forall; do you know specifically?

15 A. The one that we took out from
16 when the store was shut down when we
17 were evicted?

18 Q. When the store closed, yes.

19 A. Yes. As I said this morning, if
20 my recollection is correct, it was
21 under a million, but not -- I would say
22 between \$750,000 and 1 million; in that
23 range.

24 Q. You testified that it would have
25 been difficult but not impossible to

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 find another location to operate a
3 store. Can you describe what effort
4 Forall took to find another location to
5 operate a store?

6 A. Let's be specific. We said that
7 it was difficult to find a store in
8 Vegas. After that, I left the company
9 in -- at the end of the year,
10 so --

11 THE ARBITRATOR:

12 Mr. Torello-Viera, is the answer
13 you don't know?

14 THE WITNESS: I don't know
15 exactly.

16 THE ARBITRATOR: Then just
17 say that. That's all.

18 THE WITNESS: Sorry about
19 that.

20 THE ARBITRATOR: It's okay.
21 All right.

22 MR. LEWIS: I don't have
23 anything further, Mr. Farber.

24 THE ARBITRATOR: Okay.
25 Thank you. Did you make some

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 minutes.

3 THE ARBITRATOR: And then
4 you have Mr. Flaherty?

5 MR. BROWN: Yes, sir.

6 THE ARBITRATOR: Is there
7 anyone else?

8 MR. BROWN: No. Not
9 anticipated.

10 THE ARBITRATOR: And you're
11 going to have Mr. Salsbery,
12 Mr. Lewis?

13 MR. LEWIS: Yes.

14 THE ARBITRATOR: Do you
15 anticipate anyone besides
16 Mr. Salsbery in rebuttal?

17 MR. LEWIS: Not that I
18 anticipate.

19 THE ARBITRATOR: Okay.
20 Look, guys, I can really be tough
21 on you in an effort to finish
22 tomorrow. I really want to
23 finish tomorrow. It's very
24 expensive to try to reassemble,
25 adjourn, and all that.

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1 CROSS-EXAMINATION MR. TORELLO-VIERA
2 notes, Mr. Torello-Viera?

3 Look, we're just about at 5:30.

4 Let me ask the following, though:
5 What other witnesses do you have,
6 Mr. Brown?

7 MR. BROWN: Palma Settimi
8 and we anticipate putting on our
9 damages expert to the extend --
10 we may call Michelle Giofree with
11 Palma's office depending on if
12 there's any holes in what Palma
13 can address or not.

14 THE ARBITRATOR: How long do
15 you think you're going to be with
16 Ms. Settimi.

17 MR. BROWN: Not very long.
18 An hour, less.

19 THE ARBITRATOR: Okay. And
20 then who's the possibly next
21 witness again?

22 MR. BROWN: Michelle
23 Giofree. She was on the initial
24 witness list, and she would
25 probably be, you know, 15

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1 CROSS-EXAMINATION MR. TORELLO-VIERA

2 So, you know -- well, you
3 tell me, Mr. Brown, you want to
4 continue and try to finish this
5 witness tonight because I can't
6 sit tonight?

7 MR. BROWN: I think we need
8 to because he has a doctor's
9 appointment tomorrow morning,
10 which he just reminded me of, so
11 I do apologize.

12 THE ARBITRATOR: Okay. Then
13 we're going to do it. We'll sit
14 late and we'll finish off this
15 witness.

16 So take -- it's 5:25. I
17 want you to take no more than 10
18 minutes sharp to talk to him
19 about any areas that he wants to
20 cover, and then I want to come
21 back at 5:35, and we're going to
22 do our darnedest to finish this
23 witness tonight.

24 (Whereupon, a recess was
25 taken.)

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1 RE-DIRECT EXAMINATION TORELLO-VIERA

2 THE ARBITRATOR: Mr. Brown,
3 go ahead. You're on mute,
4 Mr. Brown.

5 MR. BROWN: I'm sorry.

6 RE-CROSS EXAMINATION
7 BY MR. BROWN:

8 Q. Paolo, a lot's been made about
9 e-mails dating back to the fall of 2014
10 today, and isn't it Forall's position
11 that the binding obligations of the
12 parties was memorialized in the
13 management agreement that was executed
14 in or around February --

15 THE ARBITRATOR: Counselor,
16 this is re-direct. I know that.
17 Let's move on. Next question.

18 MR. CROWE: I just have a
19 few issues, if I may, Mr. Farber.

20 THE ARBITRATOR: Go ahead,
21 Mr. Crowe.

22 RE-CROSS EXAMINATION
23 BY MR. CROWE:

24 Q. So the competitors in this
25 high-end marketplace, you named a bunch

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1 RE-DIRECT EXAMINATION TORELLO-VIERA

2 Mr. Torello-Viera.

3 Go ahead, Mr. Crowe.

4 Q. Which leads me to my next
5 question. There were some inquiries
6 concerning commissions as a percentage
7 of sales just a few moments ago. Do
8 you remember that?

9 A. Yes.

10 Q. In this particular instance
11 we're talking about with Sarah, and
12 assuming they have lived up to their
13 agreement going forward after 2016, was
14 there any commissions that were being
15 paid by Forall for salesmen that might
16 make the sale?

17 THE ARBITRATOR: Counselor,
18 let me say this: I do have some
19 experience in the fashion
20 industry. I know the difference
21 between retail and wholesale.
22 What we're talking about on the
23 \$900,000 minimum requirement has
24 to do with their production cost.
25 It has nothing to the do with the

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1 RE-DIRECT EXAMINATION TORELLO-VIERA

2 of names, are these companies operating
3 in a different fashion as it relates to
4 the cost structure that we discussed
5 earlier in terms of the margin?

6 A. No. Every brand that has a
7 retail end has two divisions, what we
8 call the wholesale division and the
9 retail division.

10 So to be clear, when we were
11 selling to Sarah and Sarah was running
12 the store, it was part of the wholesale
13 division. When Forall was there -- was
14 managing the Pal Zileri store, that was
15 part of the retail division.

16 Q. Right. So what I'm getting at
17 is, the competitor, if they were
18 operating retail store, they would have
19 a different cost structure; is that
20 correct?

21 A. They have a different cost, and
22 a different margin structure.

23 Q. That's my question.

24 A. To be specific --

25 THE ARBITRATOR: No need,

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1 RE-DIRECT EXAMINATION TORELLO-VIERA

2 retail end. I got it. I think
3 we can move on.

4 Q. Then I'll go past the
5 commissions, and on that same general
6 theme, the marketing budget, there was
7 some discussion of that, do you know
8 that in the contexts of this particular
9 arrangement, was that marketing budget,
10 would that be considered fixed or a
11 variable cost of Forall?

12 A. Marketing budget is a fixed
13 cost, because you determine what is the
14 amount that you can spend per year.
15 It's a set amount.

16 Q. That's all. So it's not
17 impacted by what happens in this
18 particular store in Las Vegas?

19 A. No.

20 Q. Okay.

21 MR. CROW: Thank you.

22 THE ARBITRATOR: Mr. Lewis,
23 anything further?

24 MR. LEWIS: That's all.

25 THE ARBITRATOR:

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PROCEEDINGS

Mr. Torello-Viera, thank you very much for your testimony. You're excused as a witness.

Mr. Brown, it's up to you. I may have a problem sitting late tomorrow night, but I can still go further tonight. Do you want to adjourn or do you want to do more work?

I can probably work about another 45 minutes, if you want to.

MR. BROWN: I think it will be much more sufficient in terms of speed of Ms. Settini's testimony if we broke now, I got a little more organized, and we start fresh in the morning. I do not anticipate a full morning on my end, so I'm pretty confident we can finish this tomorrow.

THE ARBITRATOR: Okay. Guys, we're going to do our best. I really want to finish tomorrow.

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PROCEEDINGS

I don't want the additional cost of another day to be incurred.

All right. 9:30 everyone, tomorrow morning. We're adjourned.

Good night, everyone.

(Time noted: 5:40 p.m.)

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CERTIFICATE

I, MAGDALENA M. ARTILES, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the Witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such Witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



Magdalena M. Artiles

Magdalena M. Artiles, a Court
Reporter and Notary Public
Date: November 8th, 2020

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AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration of

SARAH LLC, HALA SUBH, SUHAD ALBASHA,

BACHAR HAMAD AND AMAR HAMAD,

CLAIMANT,

-and-

Case No.:

01-18-0000-6180

FORALL USA, INC.,

RESPONDENT.

-----X

DATE: October 29, 2020

TIME: 9:32 a.m.

ARBITRATION in the above
entitled matter, held Via Zoom,
transcribed by Magdalena M. Artiles, a
Notary Public of the State of New York,
held before Eugene I. Farber,
Arbitrator.

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Palma Settimi
Sana'a Hussein
Chad Salsbery
Kevin Flaherty

* * *

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DIRECT-EXAMINATION OF MS. SETTIMI

THE ARBITRATOR: Mr. Brown,
who is our next witness?
MR. BROWN: Palma Settimi,
sir.

THE ARBITRATOR: Ms.
Settimi, could you stand for a
moment, please. I don't think
she can hear me.

THE WITNESS: I'm sorry. I
got a message that my connection
is unstable, but I'm back.

THE ARBITRATOR: Are you
alone in a room?

THE WITNESS: Yes.

THE ARBITRATOR: Could you
raise your right hand. Do you
solemnly swear the testimony
you're about to give in this
arbitration proceeding will be
the truth, the whole truth, and
nothing but the truth?

THE WITNESS: I do.

THE ARBITRATOR: Could you
be seated, please. Spell your

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DIRECT-EXAMINATION OF MS. SETTIMI

full name for me, and let me have
an address, which could be either
home or work.

THE WITNESS: It's Palma
Settimi; P-A-L-M-A,
S-E-T-T-I-M-I.

THE ARBITRATOR: Address,
please.

THE WITNESS: Yes. 7 Suttin
Place, Rooster, New York 10549.

THE ARBITRATOR: Okay. So,
Ms. Settimi, you sat through
the other witnesses. So you know
my admonitions in connection with
the testimony. I don't think I
have to repeat them.

Mr. Brown, why don't you
proceed.

P A L M A S E T T I M I, the witness
herein, having been first duly sworn by
the arbitrator, was examined and
testified as follows:

DIRECT-EXAMINATION
BY MR. BROWN:

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 Q. Good morning, Ms. Settimi.

3 Thank you for joining us again. You've
4 been present for the duration of the
5 testimony in this proceeding, correct?

6 A. Yes.

7 Q. And you're an officer of Forall
8 USA Inc.; is that correct?

9 A. That's correct.

10 Q. What's your title?

11 A. My title is Assistant Treasurer
12 and Secretary.

13 Q. And how long have you held that
14 position with Forall?

15 A. That's not a nice question,
16 Stephen. 30 plus years.

17 Q. The -- your office performs what
18 types of functions for Forall?

19 A. We are the back office for
20 Forall USA, so we do accounting, you
21 know, we manage all of their -- all of
22 their back office needs. We represent
23 ourselves as Forall USA. We are the
24 back office there.

25 Q. And for the duration of the time

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 one second as I share my screen.

3 MR. BROWN: I'm going to
4 Exhibit 1, everyone.

5 Q. Can you see my screen, Palma?

6 A. Yes, I can.

7 Q. And this is the document we are
8 referring to, right?

9 A. Yes.

10 Q. And while Sarah was running the
11 store in Las Vegas, did you have
12 occasion to look at the -- this
13 agreement and ensure compliance with
14 various obligations for both sides?

15 A. Yes.

16 Q. And specifically Section 4.2
17 which dealt with minimum purchase
18 requirements; do you recall that
19 provision?

20 A. Yes.

21 Q. And was that a provision that
22 you were familiar with and had to check
23 with at various points in time between
24 2011 and 2013?

25 A. Yes.

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 period in question here, in this case,
3 I'll call it 2011 through today, have
4 you served in that capacity?

5 A. Yes, I have.

6 Q. And are you familiar with the
7 license agreement by and between Sarah
8 LLC and Forall that was executed in or
9 around March of 2011?

10 A. I am.

11 Q. And you've seen that document
12 put into evidence in this case?

13 A. Yes.

14 Q. And was that your signature in
15 that document?

16 A. Yes, it was.

17 Q. And were you familiar with --
18 during the time period that Sarah was
19 managing and operating and owning the
20 Pal Zileri store in Las Vegas, with the
21 terms of the license agreement?

22 A. Yes.

23 Q. And specifically -- and I will
24 pull it up on my screen so we are not
25 just talking off memory. Bear with me

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 Q. And how about the Section 4.6
3 where Forall agreed to various
4 discounts for the early stages of this
5 agreement; do you recall this
6 provision?

7 A. Yes.

8 Q. Is that a provision you had to
9 refer to at that time?

10 A. Yes.

11 Q. And was this your -- your
12 position as when you did accounting
13 functions that you would make sure
14 these discounts were applied in an
15 appropriate manner to the Sarah
16 purchases?

17 A. Yes.

18 Q. And Section 5 -- do you recall
19 there was a build-out of store in Las
20 Vegas?

21 A. Yes.

22 Q. And were you familiar with the
23 construction costs and the various
24 allocations of those costs by and
25 between the party under this license

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1 DIRECT-EXAMINATION OF MS. SETTINI
2 agreement?

3 A. Yes.

4 Q. And did you work at that time to
5 ensure that those construction costs
6 were applied pursuant to this
7 agreement?

8 A. Yes.

9 Q. And as you sit here today, do
10 you believe that Forall complied with
11 all of its obligations under this
12 agreement?

13 A. 100 percent.

14 Q. And with respect to advertising,
15 there were certain commitments made by
16 the various -- by the parties in this
17 agreement; isn't that correct?

18 A. That's correct.

19 Q. And do you recall being involved
20 in the allocation and those
21 expenditures at that time?

22 A. Yes.

23 Q. And specifically Section 8.4,
24 which is on my screen, did you have
25 occasion in -- between 2011 and 2013,

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1 DIRECT-EXAMINATION OF MS. SETTINI
2 I'm going to go to another agreement.
3 I'm just --

4 MR. BROWN: You guys can see
5 where I'm going, it's fine. I'm
6 going to Exhibit 142, everyone.
7 That's not it, but bear with me.

8 Q. Palma, can you see the document
9 that's on the screen?

10 A. Yes.

11 Q. And this is the license and its
12 full title is, "License Agreement
13 Internet Site and Sales of License
14 Products Between Forall USA and Sarah
15 LLC." Is this your signature on the
16 third page of this document?

17 A. Yes, it is.

18 Q. And did you execute a license
19 agreement allowing Sarah LLC to sell
20 Pal Zileri products on the internet in
21 the U.S.?

22 A. Yes.

23 Q. And to your knowledge, did Sarah
24 ever take advantage of these internet
25 sales by way of establishing an

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1 DIRECT-EXAMINATION OF MS. SETTINI
2 to refer to this provision to ensure
3 that Forall was meeting its obligations
4 under the agreement?

5 A. Yes.

6 Q. And did they, in fact, meet
7 those obligations during that time
8 period?

9 A. Above and beyond.

10 Q. Okay. I'm going to go -- one
11 other thing, Palma, the Section 15
12 deals with the right of first refusal.
13 I'm sorry. The section prior.

14 Do you recall that Sarah LLC
15 negotiated rights for a -- for stores
16 in New York and Chicago?

17 A. Yes.

18 Q. Did they ever open stores there?

19 A. No.

20 Q. But they had the right to do
21 that within a certain time period of
22 the license agreement that Forall
23 allowed them that, right?

24 A. Correct.

25 Q. Bear with me one moment. Okay.

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1 DIRECT-EXAMINATION OF MS. SETTINI
2 E-commerce store that was selling to
3 the U.S.?

4 A. No.

5 Q. A lot's been made in the
6 testimony about a certain credit or
7 payment by and between Italnord and
8 Sarah; do you recall that testimony?

9 A. Absolutely.

10 Q. And are you familiar with the
11 circumstances surrounding that \$38,000
12 payments? And by that I mean, when
13 Italnord took over the management of
14 the store under agreement with Sarah?

15 A. Yes.

16 Q. And did you see the -- that
17 provision -- strike that.

18 MR. BROWN: I'm going to go
19 to Exhibit 145, folks.

20 Q. And, Ms. Settini, could you have
21 a look at this document?

22 A. Yes.

23 MR. BROWN: This is Forall
24 00213, Exhibit 145.

25 MR. LEWIS: Is this in

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 evidence?

3 THE ARBITRATOR: Is this in
4 evidence, Counselor?

5 MR. BROWN: Yes, it is, sir.
6 You guys objected to it, but it's
7 in respondent's book and its come
8 in.

9 Q. Ms. Settimi, can you tell me
10 what this is?

11 A. It's a credit memo issued by
12 Forall to Italnord on February 12,
13 2014, in the amount of \$38,000, and
14 there's a note that says, "Amount due
15 to Sarah. Part of the transition and
16 deal made to this amount -- I can't
17 read whatever it says there, but
18 carried over to Italnord." It was per
19 the purchase asset agreement.

20 Q. And is this an agreement that
21 your office generated?

22 A. Yes.

23 Q. And this is similar to the
24 records your office maintains, correct?

25 A. Yes.

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 anything on the document that
3 might refresh your memory one way
4 or the other?

5 THE WITNESS: I don't think
6 so, no. Am I allowed to speak or
7 say something?

8 THE ARBITRATOR: Yeah, sure.
9 You're on direct. If it's
10 relevant to the question I asked,
11 sure.

12 THE WITNESS: My
13 responsibility was to carry out
14 the asset purchase agreement, and
15 it's right there. I issued the
16 credit and that was all I had to
17 worry about, I believe.

18 THE ARBITRATOR: And by "the
19 asset purchase agreement," you
20 mean the agreement between Sarah
21 and Italnord, right?

22 THE WITNESS: Yes.

23 THE ARBITRATOR: Okay.

24 MR. LEWIS: Mr. Farber, I
25 just want to note an objection.

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 Q. And is this -- does this credit
3 memo evidence the fact that Forall
4 applied a \$38,000 to Italnord in
5 February of 2014?

6 A. Yes, it does.

7 Q. And upon your information and
8 belief, was this credit given to
9 Italnord because Italnord had paid
10 Sarah \$38,000?

11 A. Yes.

12 THE ARBITRATOR: How do you
13 know that?

14 THE WITNESS: It's in the --
15 it was in the asset purchase
16 agreement, so we followed the
17 agreement.

18 THE ARBITRATOR: And, also,
19 was notice of this credit memo
20 ever sent to Sarah?

21 THE WITNESS: I don't know.
22 It was -- it was -- it was
23 Italnord's credit memo, so I
24 don't know. I don't think so.

25 THE ARBITRATOR: Is there

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 Your question to Ms. Settimi was
3 how does she know that Italnord
4 made the payment, and her answer
5 was just that it was in the asset
6 purchase agreement. I'm not sure
7 that's really responsive to how
8 she knows --

9 THE ARBITRATOR: I'm aware
10 of what her answer was. It's not
11 really an objection, but I heard
12 her question. I got it. You can
13 follow it up, of course,
14 Mr. Lewis, if you so desire.

15 Mr. Brown, go ahead.

16 MR. BROWN: Okay.

17 Q. Ms. Settimi, did you ever
18 receive notice from Sarah that they had
19 not received \$38,000 from Italnord as
20 part of their -- their agreement with
21 Italnord?

22 A. No.

23 Q. You never received anything in
24 writing or saw anything in writing from
25 Sarah saying, "We were not paid 38,000

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 as required under the asset purchase
3 agreement with Italnord"?

4 A. I did not.

5 Q. Okay. This credit memo that's
6 on my screen is similar to -- strike
7 that.

8 You've heard some testimony
9 about rent and some -- some suggestions
10 that Forall paid its -- the rent late
11 and that may have led to Simon evicting
12 Forall. Do you recall that testimony?

13 A. Yes.

14 Q. Did you -- were you involved in
15 the payment of rent by Forall during
16 its management period of the Las Vegas
17 store?

18 A. Yes.

19 Q. And you would receive the Simon
20 monthly rent statements from Sarah,
21 correct, during that time?

22 A. No. They came to our New York
23 office.

24 Q. Okay. So do you have an
25 understanding how the New York office

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 something and you didn't find anything?

3 A. I didn't find anything, no. I
4 couldn't find anything.

5 THE ARBITRATOR: Given your
6 position with the company, had
7 there been a default notice in
8 rent, would you have been aware
9 of it?

10 THE WITNESS: Yes.

11 THE ARBITRATOR: Okay. Go
12 ahead. Thank you.

13 Q. Okay. There has been some
14 testimony about minimum purchases made
15 by Sarah, and you were present for
16 that, correct?

17 A. Yeah.

18 Q. The -- Mr. Spano had -- was
19 shown a document that he actually
20 created and was put on the screen and
21 put into evidence that showed various
22 construction cost s, construction costs
23 credited to Sarah, and then minimum --
24 some purchases made by Sarah. Do you
25 recall that multi colored document?

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 got it?

3 A. I would have to assume that they
4 came from Dr. Hamad.

5 Q. Okay. Is your connection okay?
6 Does it show anything?

7 A. No. Right now, it's good. Can
8 you hear me?

9 Q. I can hear you now. Your first
10 word or two was cut off.

11 Did Forall make its rent payment
12 of every month that it was at the store
13 in '15 and '16?

14 A. Yes.

15 Q. Yes?

16 A. Yes.

17 Q. And did you ever receive or see
18 a default notice from Simon to Sarah or
19 any other parties regarding the payment
20 of rent?

21 A. Never.

22 Q. And did you search your records
23 for such a default notice or anything
24 like that prior to your testimony?

25 In other words, you looked for

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 A. I do.

3 Q. Let's go to it. I'm going to
4 pull it up on my screen in a second.
5 Sorry. Hold on.

6 And did Luca Spano work with
7 your office when he was compiling
8 figures and various records during the
9 Forall management of the store -- I
10 mean, during the Sarah management of
11 the Pal Zileri store?

12 A. Stephen, I -- my internet cut
13 out again. You have to tell me the
14 question, please.

15 Q. All right. Good. It was a poor
16 question. Bear with me one second.
17 I'm struggling to find it.

18 MR. BROWN: This is

19 Exhibit 131. Sorry for the
20 delay. I'm sorry. 130. I'm
21 going to share my screen. Okay.

22 Q. Ms. Settimi, do you recognize
23 this e-mail from Luca to yourself and
24 others on February 27, 2014?

25 A. Yes.

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 Q. And so this is in February 2014.

3 Do you recall whether Italnord was
4 operating the store at that point in
5 time?

6 A. Yes.

7 Q. And this says, "Dear, Michelle."
8 Who is Michelle?

9 A. Michelle is my inhouse
10 controller CPA.

11 Q. "Per our phone conversation
12 here, enclosed please find all the
13 spreadsheets with all the final numbers
14 for Sarah LLC." Do you see that?

15 A. Yes.

16 Q. So Luca is doing a -- he's doing
17 calculations based on the final numbers
18 for Sarah during that period that they
19 ran the store from 2011 to
20 September 2013, correct?

21 A. That's correct.

22 Q. And it looks like there was some
23 clean-up work to be done, and that's
24 what this -- this e-mail is more or
25 less addressing with respect to certain

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 you can go ahead, but let's try
3 not to duplicate what he said
4 because I've heard it already.

5 Q. Ms. Settimi, I'm on the second
6 page of Luca's exhibit here, and I had
7 stepped him through and asked him about
8 whether or not that \$38,000 was
9 actually owed to Sarah under the
10 license agreement; do you recall that
11 testimony?

12 A. Yes.

13 Q. And based upon these
14 calculations, construction cost
15 totalling 948,698, right?

16 A. Yup.

17 Q. Isn't it true that Forall's
18 responsibility for those costs was
19 50 percent by way of credit on
20 purchases; isn't that right?

21 A. Right.

22 Q. And that's under the license
23 agreement?

24 A. That's correct.

25 Q. And isn't 50 percent of the

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 credits; is that more or less the case?

3 A. Yes. That's correct.

4 Q. Okay. And I'm going to the next
5 page -- well, he says, "At the button,"
6 which I assume is a typo, perhaps, at
7 the bottom, "You can see the left-over
8 credit owed to Sarah that was
9 transferred to Italnord \$38,289.15."
10 Do you see that?

11 A. Yes.

12 Q. And then he --

13 THE ARBITRATOR: Counselor,
14 can I ask why we are doing this?
15 We had Mr. Spano here and we are
16 trying to avoid duplicative
17 testimony.

18 MR. BROWN: To answer your
19 question, sir, I'm in the process
20 of confirming the numbers by way
21 of Ms. Settimi because she has
22 that knowledge.

23 THE ARBITRATOR: All right.
24 He didn't testify on the purchase
25 numbers. If that's important,

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 948,698 and actually 474,349?

3 THE ARBITRATOR: Counsel,
4 once again, this is almost an
5 exact duplication, and we did it
6 with the author of the document,
7 so I'm not sure why we are doing
8 it with this witness. Let's move
9 on.

10 MR. BROWN: I'll move on.

11 Q. So, Ms. Settimi, there are
12 invoices received to date, figures down
13 below; do you see this in blue?

14 A. Yes.

15 Q. Do you believe these numbers to
16 be accurate based upon your records?

17 A. Yes.

18 Q. Do you know why there's a 2010,
19 2011 time frame given to the right of
20 this 1 million dollar number here?

21 A. I believe that's just an error
22 by Luca. 2010 has nothing to do with
23 it.

24 Q. Did Sarah make any purchases in
25 2010?

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1 DIRECT-EXAMINATION OF MS. SETTINI

2 A. No.

3 Q. And this total figure,
4 2,202,649, is that the total purchases
5 made by Sarah during its operation of
6 the store in 2011 to 2013?

7 A. That's correct.

8 Q. Isn't it true that they
9 purchased more than the minimum
10 purchase required under the license
11 agreement in that time frame?

12 A. Yes.

13 MR. BROWN: I'm going to
14 Exhibit 175, which is in
15 evidence.

16 Q. Palma, can you see my screen?

17 A. Yes, I can.

18 MR. BROWN: And I'll zoom in
19 a little bit. This is Forall
20 000357.

21 Q. Palma, what is this document?

22 A. That's a printout from one of
23 our AR modules, account receivable
24 modules.

25 Q. And these things --

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1 DIRECT-EXAMINATION OF MS. SETTINI
2 correct?

3 A. Yes.

4 Q. As well as -- it says, "Year and
5 season." Tell me what that is?

6 A. So it's starting off with
7 year -- it says, "Year '12, fall,
8 winter '21, spring, summer '13," and so
9 on.

10 Q. Okay. And as I scroll down, you
11 see what looks like '11 fall, winter
12 and etcetera.

13 Is this -- are these the
14 total -- is this the total set of
15 invoices that Sarah purchased?

16 A. Yes.

17 Q. This 1,862,879 figure at the
18 very bottom is the total of those
19 invoices, correct?

20 A. That's correct.

21 Q. But is a gross figure or a net
22 figure?

23 A. Net figure.

24 Q. Tell me how that corresponds to
25 Luca's \$2.2 million?

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1 DIRECT-EXAMINATION OF MS. SETTINI

2 A. It's a cumulative thing. So if
3 you look at the headers -- see the
4 headers? So the sales from 2011 to
5 2013, the payments, but these are net
6 sales, not gross, because the invoices
7 already came in.

8 Q. Before you go there, let's step
9 through --

10 A. Go ahead.

11 Q. All right. So this document is
12 a summary page, right, and I'm going to
13 go to the next page, and can you tell
14 me what this represents?

15 A. Yeah. That's the detail.

16 Q. Okay. Detail of what?

17 A. Of net invoices.

18 Q. Okay. And it provides -- and
19 who is the customer here?

20 A. Sarah LLC.

21 Q. And you have invoice numbers; do
22 those correspond with invoices that
23 were given to Sarah?

24 A. Yes.

25 Q. And there's invoice dates,

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1 DIRECT-EXAMINATION OF MS. SETTINI

2 A. You won't see it there because
3 that's not there. It's just the net
4 figure. How it corresponds is you --
5 we have to add back in the 20 percent
6 that we gave in year one, and the 10
7 percent that was given in year two,
8 then you would be able to do the math
9 backwards and come to approximately
10 2.2.

11 Q. And the purchase agreement,
12 \$900,000 minimum purchase obligation,
13 that was a gross purchase dollar
14 amount, right?

15 A. That's correct.

16 Q. And I'm going to the next page
17 and this says, "Payments made," right?

18 A. Mm-hmm.

19 Q. Yes?

20 A. Yes.

21 Q. Okay. And this provides the
22 detail of the payments made by Sarah,
23 correct?

24 A. Yes.

25 Q. And the next -- sorry. And this

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 last page, which is --

3 MR. BROWN: I'll give you a
4 bates label number 361, Forall
5 361.

6 Q. Tell me what this is, these
7 records?

8 A. That is, again, cumulative
9 listing of the credit memos issued to
10 Sarah for the various invoices.

11 Q. Okay. And you had looked into
12 this \$60,000 entry here right in the
13 middle of this credit memo, right?

14 A. Yes.

15 Q. And why did you -- you looked
16 into that as you heard some of the
17 testimony during this hearing, right?

18 A. Yes.

19 Q. What was that credit issued for?

20 A. Additional discount after a
21 meeting between Luca and Marco Baritza
22 in Italy to help the store.

23 Q. And was that meeting -- was that
24 the meeting that the doctors were
25 testifying about?

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 questions.

3 MR. BROWN: Okay.

4 THE ARBITRATOR: So, first
5 of all, on the last item, Ms.
6 Settimi, so on a regular basis,
7 maybe at the end of every year or
8 some time thereafter, was a
9 notice sent to Sarah regarding
10 its obtaining or failing to
11 obtain or failing to place orders
12 meeting the minimum purchase
13 requirement?

14 THE WITNESS: Never.

15 THE ARBITRATOR: Why not?

16 THE WITNESS: Because they
17 met the minimum purchase
18 requirement every season, every
19 year.

20 THE ARBITRATOR: In the
21 second year they met the minimum
22 purchase requirement?

23 THE WITNESS: Yes, they did.

24 THE ARBITRATOR: The first
25 year was '12, right?

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 A. I'm not sure if it's the same
3 meeting. I can't tell you that.

4 Q. But that -- so your records
5 indicate that that \$60,000 was
6 additional discounts given at that
7 time?

8 A. That's correct.

9 Q. And that was above and beyond
10 what was set forth in the license
11 agreement?

12 A. Yes.

13 Q. And was that, to your knowledge,
14 a one-time discount given?

15 A. Yes.

16 Q. Were you ever told that Sarah
17 did not have to make the minimum
18 purchase requirement under the license
19 agreement?

20 A. Never.

21 MR. BROWN: Mr. Farber, if I
22 could just take a couple of
23 moments. I think I may be done.

24 THE ARBITRATOR: All right.
25 I just want to ask one or two

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 THE WITNESS: The first year
3 was -- I mean, I don't know how
4 you want to look at it. They
5 started with us in September of
6 2011, so are we going to fall,
7 winter, to spring, summer or --

8 THE ARBITRATOR: Either way.
9 I don't know what you did.

10 THE WITNESS: Am I allowed
11 to read off my notes, because I
12 have it right in front of me. I
13 mean, I know what they did and it
14 corresponds to the 2.2 million.

15 THE ARBITRATOR: Okay. That
16 was the first year, right, '11,
17 '12?

18 THE WITNESS: Yeah.

19 THE ARBITRATOR: Okay. Did
20 they meet it for '12, '13?

21 THE WITNESS: Yes, they did.

22 THE ARBITRATOR: All right.
23 And then '13, '14, really they
24 weren't there any more, right, so
25 I understand.

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1 DIRECT-EXAMINATION OF MS. SETTINI

2 THE WITNESS: It was four
3 seasons involved in Sarah.

4 THE ARBITRATOR: Let me ask
5 you something else. Are you
6 familiar with Forall's profit
7 margins?

8 THE WITNESS: You know, yes
9 and no. I'm not -- I'm not the
10 CPA on the account, but vaguely
11 familiar.

12 THE ARBITRATOR: Do you
13 know, for example, on a
14 percentage basis what Forall's
15 costs of goods sold was, say in
16 '13?

17 THE WITNESS: No, I don't
18 recall.

19 THE ARBITRATOR: Is that
20 information available?

21 THE WITNESS: Yeah.

22 THE ARBITRATOR: What about
23 in '12 or '14, would you have
24 known that?

25 THE WITNESS: Personally,

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1 DIRECT-EXAMINATION OF MS. SETTINI

2 A. Yes.

3 Q. And it's still an on-going
4 concern?

5 A. Yes.

6 Q. Mr. Farber was asking you about
7 cost of goods and margin numbers,
8 right?

9 A. Yes.

10 Q. Is there someone in your office
11 that does have and is intimately with
12 that information?

13 A. Yes. That would be Michelle
14 Gioffre, our CPA.

15 Q. You have extensive experience in
16 the retail and wholesale business,
17 don't you?

18 A. Yes.

19 Q. Can you just give for, Mr.
20 Farber, some of your other clients'
21 names?

22 A. Yes. Vernelo Cuccineli
23 (phonetic) for 20 years, Federico
24 (phonetic) for 22, Pasadiso Brachani
25 (phonetic) 24. Is that enough? I can

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1 DIRECT-EXAMINATION OF MS. SETTINI
2 no.

3 THE ARBITRATOR: Was Forall
4 a profitable company in, say,
5 '13.

6 THE WITNESS: No.

7 THE ARBITRATOR: Was it a
8 profitable company in '12?

9 THE WITNESS: No.

10 THE ARBITRATOR: '14?

11 THE WITNESS: No.

12 THE ARBITRATOR: Okay. All
13 right. You may want to take a
14 break at this point. Let's take
15 that break. Let's give Mr. Brown
16 five. All right.

17 (Whereupon, a recess was
18 taken.)

19 Q. Palma, how long has Forall been
20 in operations?

21 A. 1989.

22 Q. And it's still in operations?

23 A. We are speaking of Forall USA,
24 correct?

25 Q. Yes.

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1 DIRECT-EXAMINATION OF MS. SETTINI

2 keep going.

3 Q. That's fine. But these are
4 Italian manufacturers?

5 A. Yes.

6 Q. Based upon your experience in
7 this space, do you think that Pal
8 Zileri or Forall could have reasonably
9 reopened another store on the heels of
10 this closure of the eviction in August
11 of 2015?

12 A. Immediately?

13 Q. Yes.

14 A. No.

15 Q. Wouldn't that have taken a long
16 time to repair that damage?

17 A. Absolutely.

18 Q. How long would you estimate?

19 A. I mean, it would be a matter of
20 choice, but I personally would stay out
21 of that market for quite some time.

22 Q. Good number -- for a good number
23 of years, more than four, five, right?

24 A. Maybe, yes.

25 MR. BROWN: I don't have any

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 further questions.

3 THE ARBITRATOR: Okay. So
4 we are going to start now with
5 the cross. Ms. Settimi, you know
6 my admonition to a party witness
7 on cross. Just listen to
8 Mr. Lewis' questions, and respond
9 as directly and as succinctly as
10 you can.

11 And he's in charge of the
12 examination, so don't fight with
13 him, because he's going to always
14 win. So just listen and respond
15 to his questions, unless
16 Mr. Brown says the word
17 "objection."

18 MR. CROWE: Mr. Farber, if I
19 may, just if I can get, and,
20 obviously, we can't hold Mr.
21 Lewis to this, just an idea in
22 terms of ballpark how much time
23 so I can get the next witness
24 lined up?

25 THE ARBITRATOR: Mr. Lewis,

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 2011; is that true?

3 A. Yes.

4 Q. And you checked the entry of
5 \$60,000 credit to answer Mr. Brown's
6 credit question about that, right?

7 A. Yes.

8 Q. And you were present for
9 Mr. Torello-Viera's testimony yesterday
10 where he said he reviewed sales figures
11 in preparation for his testimony; do
12 you recall that?

13 A. Yes.

14 Q. Did your office provide
15 Mr. Torello-Viera with those sales
16 figures?

17 A. I'm not sure if he was speaking
18 about store sales figures or purchase
19 figures.

20 Q. Did you provide documentation
21 for Mr. Torello-Viera to review?

22 A. No.

23 Q. Do you know if he provided any
24 figures for -- to his attorneys in
25 preparation for his testimony?

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 do you have any idea?

3 MR. LEWIS: I'm not sure.

4 Probably 45 minutes.

5 MR. CROWE: Okay. Thank
6 you.

7 THE ARBITRATOR: Thanks.

8 Go ahead, Mr. Lewis.

9 CROSS-EXAMINATION

10 BY MR. LEWIS:

11 Q. Good morning, Ms. Settimi.

12 A. Good morning, Mr. Lewis.

13 Q. Ms. Settimi, you were not
14 present at the meeting in Italy in
15 November 2012 between the doctors and
16 Marco Baritza and Luca Spano, correct?

17 A. That's correct.

18 Q. So you don't have first-hand
19 knowledge of what was said and shared
20 at that meeting, right?

21 A. No.

22 Q. You testified that you had
23 reviewed records to support your
24 testimony to Mr. Brown's examination
25 about sales and purchases going back to

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 A. Meaning our attorneys, Forall's
3 attorney?

4 MR. BROWN: I'm going to
5 object to that. That would be
6 privileged. Any -- I don't know
7 why he is asking -- trying to
8 get into prep work.

9 THE ARBITRATOR: Mr. Brown,
10 I think she can answer "yes" or
11 "no" as long as she doesn't say
12 anything about the substance of
13 it.

14 I think -- I think it does
15 not intrude upon the privilege
16 just to say that you delivered
17 something.

18 MR. BROWN: No. I would
19 disagree. The -- what the
20 witness, Mr. Paolo, reviewed with
21 counsel in his prep.

22 THE ARBITRATOR: He didn't
23 ask about review. He just asked
24 about -- read the question,
25 Maggie.

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 (Whereupon, the record was
3 read by the reporter.)

4 THE ARBITRATOR: Overruled.

5 You can say if you just provided
6 and that's a "yes" or "no".

7 A. I still don't understand the
8 question, because I don't know if I'm
9 being asked if I gave information to
10 Mr. Brown in terms of --

11 THE ARBITRATOR: Mr. Lewis,
12 rephrase. Go ahead. And, Mr.

13 Lewis, he's right. It's --
14 anything substantive, I'm going
15 to sustain an objection on
16 privilege.

17 Q. Did you provide information from
18 your office to Mr. Brown in preparation
19 for this arbitration?

20 A. Yes.

21 Q. Ms. Settimi, you are familiar
22 with the lease between Sarah and Simon
23 for the Las Vegas store?

24 A. Somewhat.

25 Q. You are familiar with the

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 over these sales figures pursuant
3 to the lease? If you know.

4 THE WITNESS: We managed the
5 store. We provided the sales
6 figures, yes.

7 THE ARBITRATOR: Go ahead,
8 Mr. Lewis.

9 MR. LEWIS: I am, Mr.
10 Farber. Thank you.

11 THE ARBITRATOR: Okay.

12 Q. Ms. Settimi, can you see my
13 screen? It should be a red rectangle
14 here. Do you see that?

15 A. Yes.

16 Q. All right. Ms. Settimi, this is
17 the lease. There are certain
18 conditions of the lease, which I called
19 out to make it easier to read, but the
20 lease between Forum Shops, Simon, and
21 Sarah, do you see this Section 4.1?
22 Can you read that?

23 A. "Tenant consents and agrees to
24 pay landlord without notice or demand
25 at the remittance address, the minimum

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 requirement for the stores -- for the
3 Las Vegas store to turn over monthly
4 sales reports to Simon each month,
5 correct?

6 A. Yes.

7 MR. BROWN: During what time
8 period?

9 THE ARBITRATOR: She's
10 answered already. So she said,
11 "yes." Go ahead. Next question.

12 Q. And did Forall turn over sales
13 to Simon pursuant to the lease in 2015?

14 MR. BROWN: Objection.

15 THE ARBITRATOR: What's the
16 objection?

17 MR. BROWN: He threw
18 "pursuant to the lease" in there.
19 I don't know what -- if this
20 witness has familiarity with that
21 or not.

22 THE ARBITRATOR: That's
23 exactly what she's going to tell
24 us. Overruled.

25 If you know, did you turn

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 rent set forth in Article 1, in advance
3 upon the first day of each and every
4 month of the lease term."

5 Q. And then I've got another
6 section here. Section 4.3, can you
7 read that?

8 A. "Tenant shall not, later than
9 the 5th day after the close of each
10 calendar month, deliver to the landlord
11 at the center, office, a written
12 statement certified under oath by a
13 tenant or an officer of tenant showing
14 gross sales and adjusted gross sales
15 made in such calendar month, and not
16 later than 30 days after the end of
17 each lease year or partial lease year,
18 deliver to landlord at the center
19 office a statement of gross sales, and
20 adjusted gross sales for such lease
21 year or partial lease year the credence
22 of which is certified by tenant or an
23 officer -- or officer of tenant."

24 Q. And you testified that while
25 Forall was operating the store, you

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1 CROSS-EXAMINATION OF MS. SETTINI
2 adhered to the terms of the lease
3 agreement with Simon, correct?

4 A. Correct.

5 MR. BROWN: Objection. Her
6 testimony pertained to submitting
7 the -- the monthly sales
8 figures.

9 THE ARBITRATOR: She already
10 answered the question, so I'm not
11 sure what the objection is to.

12 Let's go to the next question.

13 Q. Ms. Settini, are you aware of
14 the Las Vegas stores gross sales in
15 2016?

16 A. No.

17 Q. You're not aware now or -- let
18 me ask you -- were you responsible for
19 turning or were you part of -- was part
20 of your responsibility turning over the
21 sales figures to Simon in 2016?

22 A. My team did, yes.

23 Q. Your office participated in
24 that?

25 A. Yes.

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1 CROSS-EXAMINATION OF MS. SETTINI
2 know what they were, and now he's
3 asking does she dispute them.

4 THE ARBITRATOR: I don't
5 know what -- Mr. Lewis, she can
6 answer, but I don't know what
7 good it does me because, you
8 know, unless she knows what the
9 figures are, what's the
10 difference to me?

11 I mean, she could or could
12 not be surprised or dispute them.
13 She said she doesn't know the
14 figures. Don't we have the
15 figures in the record somewhere,
16 Mr. Lewis?

17 MR. LEWIS: We don't, but we
18 should, Mr. Farber, and that's
19 what I'm going to do now is
20 placing in the record.

21 What we have been trying to
22 lay a foundation so that we
23 can have the figures admitted
24 into evidence.

25 Mr. Brown has objected to

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1 CROSS-EXAMINATION OF MS. SETTINI

2 Q. You all performed back office
3 accounting for Sarah -- excuse me --
4 for Forall, so that would have been
5 part of your responsibility, correct?

6 A. Yes.

7 Q. And you testified earlier --
8 well, let me ask you this: In August
9 of 2016, does sales of \$38,320 for that
10 month, do you have any reason to doubt
11 that that was the sales for August of
12 2016 for the Las Vegas store?

13 MR. BROWN: Objection. I
14 mean, outside the scope, but
15 also --

16 THE ARBITRATOR: In
17 arbitration we don't get too hung
18 up on scope because it's not like
19 court where -- you know, he'll
20 just say call her as his witness,
21 so it's kind of a waste of time.
22 So we don't do that. So what's
23 the next objection?

24 MR. BROWN: He's reading
25 figures. She said she didn't

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2 that, and Mr. Farber said for now
3 we're going to leave them out and
4 see if we can lay a foundation.
5 I'm raising it again, so we can
6 have these admitted in the
7 record.

8 THE ARBITRATOR: Okay. Are
9 these documents that were on the
10 original list?

11 MR. LEWIS: They were.

12 THE ARBITRATOR: And I think
13 you objected because you said you
14 didn't know who had prepared
15 them; is that it?

16 MR. BROWN: No. No. This
17 -- the -- it's been consistent
18 applying this rule. These
19 documents were not produced to me
20 at any point in time during
21 discovery. They were produced
22 only after I received their
23 proposed exhibits.

24 I said, "What are these
25 documents? I didn't have these

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2 dates ranges." So, you know, 10
3 days before the arbitration, they
4 sent over what he's now referring
5 to, and I haven't been able to
6 get things in and on that basis,
7 and neither should he.

8 THE ARBITRATOR: So rather
9 than waste time, Mr. Lewis, you
10 know my ruling is going to be
11 consistent, why are we going down
12 this past, if that's what
13 occurred?

14 MR. LEWIS: Sure. These are
15 documents from Simon. Both sides
16 -- everyone that testified -- has
17 acknowledged that the lease
18 required the monthly reports to
19 Simon. This is a compilation of
20 those monthly reports from Simon.

21 These are documents that
22 Mr. Brown was seeking to get from
23 Simon, but was unable to get them
24 through the subpoena. We were
25 able to get them. We made them

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2 But absent you representing to me
3 that you got the information from
4 Simon just soon prior to when you
5 turned it over, the ruling is
6 going to be the same.

7 MR. BROWN: Your Honor, if I
8 also may be heard, this
9 arbitration was set to go in
10 March, we were 10 days out at
11 that point, I believe is the
12 timing of it, okay.

13 This was essential to their
14 case. They've had two years to
15 produce it, and you know, it's
16 not -- if this is so germane to
17 them -- I mean, what's the point
18 really that he's even trying to
19 establish?

20 THE ARBITRATOR: Counsel, at
21 this point prevailed in
22 connection with my ruling. So
23 let's see if Mr. Lewis wants to
24 push it.

25 I said I might take a

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 available to Mr. Brown in 10 days

3 --

4 THE ARBITRATOR: So why did
5 we wait so long?

6 MR. LEWIS: We had to get
7 them from Simon.

8 THE ARBITRATOR: When did
9 Simon send them to you?

10 MR. LEWIS: I don't have
11 that date in front of me, but we
12 shared things with Mr. Brown much
13 earlier than what Mr. Brown
14 shared things with us, but that's
15 not the point.

16 THE ARBITRATOR: It is the
17 point. If you got them from
18 Simon, you know, two weeks ago,
19 and you turned them over 10 days
20 ago, I might take a different
21 view of it.

22 But unless I have that
23 information -- because,
24 obviously, you couldn't do it
25 beforehand if that was the case.

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 different view if he just got
3 them from Simon. I would just
4 ask him why he didn't get them
5 sooner, if he has a decent
6 explanation, I'm going to let
7 them in. If there's no decent
8 explanation, it's going to stand.

9 Okay. Let's move on and
10 maybe Mr. Shah can check it while
11 you're proceeding with your
12 examination.

13 MR. LEWIS: We can do that,
14 Mr. Farber. I'd like to ask
15 you -- I still have the
16 opportunity to refresh the
17 witness's recollection with these
18 numbers, and that's what I'm
19 doing right now.

20 THE ARBITRATOR: You can do
21 that. Go ahead.

22 Q. Ms. Settimi, I asked you if
23 \$38,320 for August sales in 2016, is
24 that consistent with your recollection
25 of the store's performance?

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 A. I don't recall.

3 Q. What about \$59,440 for July of
4 2016, is that consistent with your
5 recollection of the store's
6 performance?

7 MR. BROWN: Objection. This
8 isn't refreshing her
9 recollection.

10 THE ARBITRATOR: Do you have
11 any memory about the figures,
12 Ms. Settimi? Is Settimi or
13 Settimi, by the way. I didn't
14 catch it.

15 THE WITNESS: I have asked
16 everyone including my husband. I
17 don't know. I say Settimi.

18 THE ARBITRATOR: How do you
19 spell it? With an M or an N?

20 THE WITNESS: It's an M, as
21 in Mary. And I'm an Italian
22 language major, and I can't tell
23 you the answer.

24 THE ARBITRATOR: Ms.
25 Settimi, look, did you have a

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 handle on the figures at the time
3 of what the monthly sales were
4 for in -- '16 for the store?

5 THE WITNESS: Mr. Farber,
6 I'm trying to answer his
7 question, as you said, as
8 precisely as possible. I have a
9 team that did what they did. I
10 don't want to just answer a
11 general "yes" or "no," so I'm
12 going to say I don't recall.

13 THE ARBITRATOR: All right.
14 Well it's up to Mr. Lewis if he
15 wants to try to refresh your
16 memory, he can do so.

17 Q. Ms. Settimi, would Michelle
18 Gioffre in your office, would she have
19 a closer connection to these numbers,
20 was she more involved than you?

21 A. Yeah.

22 Q. I'll ask you with the sales
23 figure \$48,057 for June of 2016; does
24 that refresh your recollection as to
25 how the store performed in June 2016?

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 MR. BROWN: Objection. This
3 is not appropriate means of --
4 this is reading something into
5 the record. This isn't --

6 THE ARBITRATOR: I'm not
7 taking notes because the
8 testimony is the answers, not the
9 questions. I know that. So you
10 don't have to be concerned about
11 that, Mr. Brown. It's a question
12 with an answer of "I don't know,"
13 doesn't mean anything to me.

14 Do you know Ms. Palma or
15 not?

16 THE WITNESS: I do not.

17 THE ARBITRATOR: Next
18 question.

19 Q. Do you have an understanding of
20 the average monthly sales for the Las
21 Vegas store while Forall operated the
22 store?

23 A. I do not.

24 Q. Would Ms. Gioffre be a person
25 that would have that information?

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 A. On the top of her head right
3 this moment?

4 THE ARBITRATOR: Counsel, I
5 think she's going to be
6 testifying in about an hour or
7 so, so I don't know why we are
8 asking this witness if she'll
9 know it. We can ask her if she
10 knows it.

11 MR. LEWIS: Well, I'm asking
12 Ms. Settimi if this is more under
13 Ms. Gioffre's purview.

14 THE ARBITRATOR: Do you know
15 if this is under her purview?

16 THE WITNESS: Yes.

17 THE ARBITRATOR: Okay.

18 Q. Ms. Settimi, you testified about
19 Forall making all of the rent payments
20 while it was operating the Las Vegas
21 store, correct?

22 A. Yes.

23 Q. Are you aware whether Forall
24 made all of the rent payments by the
25 first of each month?

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CROSS-EXAMINATION OF MS. SETTIMI

A. Not all of them.

Q. So on more than -- when you say, "not always," was it at least on one occasion when the rent was paid after the first of the month?

A. Yes.

Q. Were there multiple occasions when the rent was paid after the first of the month?

A. Yes. But always within the grace period.

Q. I just asked you if your testimony is that the rent was paid after the first of the month on multiple occasions?

A. Yes.

Q. Okay. Were you aware that part of -- are you aware whether the store's performance -- sales performance improve under Forall, and I mean improved other than the numbers that Italnord was able to produce?

MR. BROWN: I'm going to object to that question. I don't

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CROSS-EXAMINATION OF MS. SETTIMI

really know what it means.

MR. LEWIS: I'll ask it differently.

Q. Ms. Settimi, are you aware of how Italnord performed from the sales perspective when it operated the store?

A. I don't recall.

Q. Would Ms. Gioffre be someone in your office that would be aware of Italnord's sales while it operated the store?

A. Possibly.

Q. Do you have an appreciation for whether the Forall store sold more merchandise under Forall's operation than it did under Italnord's operation?

A. I don't remember.

Q. Mr. Brown asked you about a chart that's in Exhibit 130; do you recall that?

You testified about a chart that Mr. Brown showed you with inventory purchases; do you recall that?

A. The color chart?

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CROSS-EXAMINATION OF MS. SETTIMI

Q. That's correct.

A. Yes.

MR. LEWIS: Mr. Brown, the Exhibit 130 that's in our book does not have the chart attached, it just has the e-mail.

MR. SHAH: I'm going to jump in, just to clarify for the record. The cover e-mail is 130 and then the chart is 131.

MR. BROWN: Thank you. I have it up on my -- I can give you the bates if you need it.

MR. LEWIS: I have it.

Thank you.

Q. Ms. Settimi, can you see my screen?

A. Yes.

Q. And you just testified about this chart under Mr. Brown's examination, right?

A. Yes.

Q. And, specifically, you testified about the invoices received to date for

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CROSS-EXAMINATION OF MS. SETTIMI

-- while Sarah was operating the store, right?

A. Yes.

Q. And Mr. Farber asked you whether Sarah had met its minimum purchase requirement each year while it was operating the store; do you remember that question?

A. Yes.

Q. You testified in the affirmative. But isn't it true that Sarah over -- Sarah exceeded the minimum purchase requirement in the first year, right?

A. Yes.

Q. But they did not meet the minimum purchase requirement in the second year, right?

A. That's not what my records reflect.

Q. Well, I mean you were aggregating to testify that they met minimum purchase requirement including the overage in the first year; isn't

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 that true?

3 A. Yes.

4 Q. And isn't it true that Italnord
5 actually paid for the merchandise in
6 2013?

7 A. No. Italnord began to pay for
8 invoices -- our last shipment to Sarah
9 was dated May 30th and the invoice for
10 Sarah during spring summer '13 was the
11 total 500,000 --

12 Q. I understand about the invoices.
13 I asked you who actually paid for it.

14 MR. CROWE: The witness
15 answered the question.

16 MR. LEWIS: I'm sorry, we
17 have a lot of objections coming
18 from different attorneys.

19 THE ARBITRATOR: Guys, it's
20 hard for me to hear. Hold on.

21 Let's take one at a time.

22 Restate your question, Mr. Lewis.

23 If there's an objection, say it a
24 little louder so I can hear it.

25 Q. Doesn't this chart reflect

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 invoices, Ms. Settimi?

3 A. Does the -- the chart in front
4 of me, the three line, yes.

5 Q. These don't reflect payments,
6 these reflect invoices; is that
7 correct?

8 A. Yes.

9 Q. I'm asking you -- isn't it true
10 that Italnord paid the 2013 invoices?
11 I'm asking if you're aware of that.

12 A. I don't know.

13 Q. Are you aware -- Ms. Settimi,
14 you're obviously aware of purchases
15 going back to 2011. Are you aware
16 whether Italnord purchased any
17 additional merchandise while it
18 operated the store?

19 A. Yeah.

20 Q. And how much additional
21 merchandise did Italnord purchase?

22 A. For the fall, winter \$736,000.

23 Q. May I ask you to say that again?

24 A. Approximately \$736,000 for the
25 fall, winter of 2013.

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 Q. They purchased any merchandise
3 in 2014?

4 A. Yes.

5 Q. How much?

6 A. Approximately \$673,000.

7 Q. And that would be for the entire
8 -- for two seasons in 2014?

9 A. Up until -- when did they
10 finish? 2015, yes.

11 Q. So they did not -- and again,
12 was it your understanding -- was it
13 your understanding that Italnord was
14 purchasing under the same minimum
15 purchase requirement as Sarah?

16 A. Yes.

17 Q. Was there a separate contract
18 signed with Italnord between Forall and
19 Italnord?

20 A. No.

21 Q. You hesitated. Are you sure
22 that there was no agreement signed
23 between Forall and Italnord pertaining
24 to the Las Vegas store?

25 MR. BROWN: Objection.

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 Asked and answered.

3 MR. LEWIS: I'm asking --

4 THE ARBITRATOR: She did
5 hesitate.

6 Do you remember for
7 sure, Ms. Settimi?

8 THE WITNESS: Yes. I'm just
9 trying to put all the dates
10 together in my head.

11 THE ARBITRATOR: Okay. Your
12 answer is, as far as she knows,
13 there was no separate agreement.

14 Q. So if the minimum -- and it is
15 Italnord or is it Italnord?

16 A. Italnord.

17 Q. Okay. Italnord sounds better.
18 I'm going to go with that.

19 THE ARBITRATOR: That one is
20 easy to figure out. It's in
21 northern Italy. Go ahead.

22 MR. LEWIS: Fair enough.

23 Q. So they didn't reach the minimum
24 purchase requirement, correct, in 2014?
25 Ms. Settimi?

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 A. Yes.

3 Q. Italnord did not meet the
4 minimum purchase requirement in 2014,
5 right?

6 MR. BROWN: Objection.

7 THE ARBITRATOR: What's the
8 objection?

9 MR. BROWN: She gave the
10 numbers and they did.

11 THE ARBITRATOR: Well, then
12 she'll say they did. Overruled.

13 A. They absolutely did.

14 Q. Well, if I understand correctly,
15 you said there was a purchase in 2013
16 of 736 and you said for two seasons in
17 2014. If I heard you correctly, you
18 said that there was 673; did I
19 misunderstand that?

20 A. Those are the two seasons I gave
21 you.

22 Q. Oh, you were -- I thought you
23 were testifying that there was three
24 seasons of 736 and then two seasons for
25 673?

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 2015, 2011?

3 A. Yes.

4 Q. Mr. Farber asked you if Forall
5 was a profitable company from 2012 to
6 2014, your answer was no, correct?

7 A. That's correct.

8 Q. Is your answer the same for
9 2015?

10 A. Correct.

11 Q. What about 2016?

12 A. Correct.

13 Q. What about 2017?

14 A. Correct.

15 Q. What about 2018?

16 A. Correct.

17 Q. What about 2019?

18 A. Correct.

19 Q. 2020, so far?

20 A. I can't tell you.

21 Q. How are we doing so far?

22 MR. BROWN: Objection.

23 THE ARBITRATOR: Overruled.
24 She may know.

25 A. I don't think anyone is doing

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 A. No. Those are two season.

3 Q. I believe Mr. Farber may have
4 asked you something related, but what
5 was Forall's gross profit margins for
6 -- for the United States of America
7 2016?

8 A. I don't recall.

9 Q. Would Ms. Gioffre in your office
10 have that information?

11 A. Yes.

12 Q. Is your answer going to be the
13 same for 2015 from 2011?

14 A. Yeah.

15 Q. If I ask you about just the
16 store, the Las Vegas store's gross
17 profit margins, do you have that
18 information?

19 A. No.

20 Q. Again, would that be
21 something -- would Ms. Gioffre have
22 that information?

23 A. Probably.

24 Q. And the same -- your answer
25 would be the same for the other years

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 very well with COVID.

3 Q. I think that's fair to say.
4 COVID is having an impact on all
5 businesses, right?

6 A. Thank you.

7 THE ARBITRATOR: Let's move
8 on.

9 Q. Ms. Settimi, do you have audited
10 financial statements for Forall?

11 A. I have to say I don't know.

12 Q. Well, are you the head of the
13 company?

14 MR. BROWN: Objection.

15 Mr. Farber --

16 THE ARBITRATOR: She said
17 she's Assistant Treasurer and
18 Secretary.

19 MR. LEWIS: I mean of the
20 account firm that she runs. The
21 back office company she --

22 THE ARBITRATOR: Let's let
23 him state the question, and then
24 we'll see if there's an
25 objection.

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 Q. Ms. Settimi, the back office
3 company that you run, you're -- you're
4 the head of that company, correct?

5 MR. BROWN: Objection.
6 Relevance.

7 THE ARBITRATOR: Overruled.

8 You can answer. You
9 have the question, Ms. Settimi?

10 THE WITNESS: I'm sorry. I
11 went out.

12 THE ARBITRATOR: The
13 question is: You do your work
14 through an independent company,
15 Ms. Settimi, is that right?

16 THE WITNESS: Yes.

17 THE ARBITRATOR: Because you
18 said you represented other
19 companies as well.

20 THE WITNESS: Yes.

21 THE ARBITRATOR: So counsel
22 is asking if you are the
23 controlling principal of your own
24 company?

25 THE WITNESS: Yes.

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 THE WITNESS: They're
3 reviewed.

4 THE ARBITRATOR: Okay. All
5 right.

6 Q. Do you have those available?

7 MR. BROWN: Objection.
8 Where are we going, Mr. Farber?

9 THE ARBITRATOR: Overruled.
10 You can answer. Do you

11 have those available?

12 THE WITNESS: Yes.

13 Q. Would those -- do those reviewed
14 financial statements show gross margin
15 percentage?

16 A. I -- well, I'm sure you could
17 calculate it from there, but I don't
18 know.

19 Q. Do you have them available? I'm
20 going to ask you to answer that for us,
21 if necessary, we can certainly wait for
22 you to review them. Do they have gross
23 margin percentage? Could you share
24 that with us?

25 MR. BROWN: Objection. This

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 THE ARBITRATOR: Okay.

3 Mr. Lewis, go ahead.

4 Q. So I'll ask you again, do you
5 -- does your company have audited
6 financial statements for Forall?

7 MR. BROWN: Objection.

8 Relevance.

9 A. I don't --

10 THE ARBITRATOR: Overruled.

11 A. I don't -- I don't know if they
12 are reviewed or audited statements.
13 There's different degrees of audits.
14 So I'm not -- I have a lot of clients.
15 I don't really remember, so I don't
16 want to say anything incorrect.

17 THE ARBITRATOR: So leave
18 off the word audit, and do they
19 have an annual, maybe quarterly,
20 then annual financial statements?

21 THE WITNESS: Yes.

22 THE ARBITRATOR: And do you
23 know offhand if those financial
24 statements are the result of a
25 review?

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 is not a discovery proceeding,
3 Mr. Farber. This is a hearing.

4 THE ARBITRATOR: Sustained.
5 Next question.

6 Q. The question is --

7 MR. LEWIS: Well, Mr.
8 Farber, if I may be heard, Ms.
9 Settimi said she could not speak
10 to gross margin percentage, but
11 then she said there's a document
12 that would refresh her
13 recollection because it would
14 show gross margin percentage and
15 it's available to her.

16 MR. BROWN: My witness is
17 not going into her office and
18 doing discovery.

19 THE ARBITRATOR: But
20 Counselor, you're asking her -- I
21 don't know if she's sitting in
22 her office. You're asking her to
23 go find documents right now and
24 look through her own documents
25 and this is something that could

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 have been done beforehand.

3 MR. LEWIS: Mr. Farber, may
4 we ask for those to be produced?

5 THE ARBITRATOR: I'll
6 consider that later on. I'm not
7 going to say yes or no on that
8 point because I have read the
9 expert reports and that is
10 something that concerns me as
11 well, which is why I started
12 asking what I asked. So I'm
13 going to hold on that one and
14 I'll hear argument on that one
15 later on.

16 Okay. Anything else that
17 you have, Mr. Lewis?

18 MR. LEWIS: Yes, Mr. Farber.
19 Thank you.

20 Q. Ms. Settimi, are you familiar
21 with Forall's cost structure?

22 A. No.

23 Q. Is Michelle Gioffre someone that
24 maybe is familiar with that?

25 A. Possibly.

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 that agreement.

3 Q. Okay. So with three percent,
4 just doing the math backwards, and it
5 was \$27,000 a year, that was the cap
6 27,000, correct?

7 A. Yes.

8 Q. And if that was three percent of
9 sales, then overall sales would have
10 been approximately 700 million range?

11 MR. BROWN: Objection. The
12 license agreement provision -- I
13 -- I'm just a little surprised by
14 the question, to be honest with
15 you.

16 MR. LEWIS: I'll withdraw
17 it.

18 Q. Ms. Settimi, let's talk about
19 the wind down of the store in August of
20 2016. Are you aware which date the
21 store actually closed?

22 A. No. Not the actual date.

23 THE ARBITRATOR: Ms.
24 Settimi, if you're looking at
25 some notes, please put them away.

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 Q. For marketing, Ms. Settimi, did
3 -- did Forall decide what percentage of
4 its sales it would devote to marketing in
5 a certain jurisdiction -- let me ask
6 that differently.

7 You will recall that there's a
8 three percent allocation for marketing
9 and advertising in the license
10 agreement with Sarah, correct?

11 A. Yes.

12 Q. Okay. And did that -- how was
13 that determined?

14 A. I don't know.

15 Q. You're not familiar with it?
16 Was that your answer?

17 A. I don't know how they determined
18 it. I know what's in the agreement,
19 but I don't know how they came to that
20 percent.

21 Q. Do you know if that's a
22 percentage of sales or if it's -- if
23 it's a calculus that comes up with the
24 three percent?

25 A. It was a percent of sales in

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 All right? Because we just want
3 your best memory. We don't want
4 you reading any notes.

5 A. I know it closed in August.

6 Q. Did you hear Mr. Torello-Viera's
7 testimony that there was approximately
8 \$700,000 worth of inventory in the
9 store when it closed?

10 A. I heard.

11 Q. Do you have an appreciation
12 whether that number is accurate?

13 A. I don't recall.

14 Q. Do you know whether that number,
15 accurate or not, do you know whether
16 Mr. Torello-Viera would have been
17 talking about gross number or -- or
18 would that have included markup?

19 A. I don't know.

20 Q. Do you have any evidence of any
21 opportunities that were lost as a
22 result of the store closing in August
23 of 2016?

24 Did you hear us Ms. Settimi?

25 A. No.

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CROSS-EXAMINATION OF MS. SETTIMI

MR. BROWN: What was the question? I'm sorry.

Q. The question was whether you have any evidence of any opportunities that were lost as a result of the store closing in August of 2016?

A. I mean, it's obvious, isn't it? I mean, I'm not quite sure.

THE ARBITRATOR: He's not asking you about what might be obvious. He's asking if you know of any particular opportunities that were lost by Forall as a result of the store closing in August '15?

THE WITNESS: I have -- I -- I have to say I don't know.

THE ARBITRATOR: Okay.

Q. Are you aware that Forall had informed Sarah that it was no longer going to operate the store as of September 1, 2016; you're aware of that, right?

A. Say that again.

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CROSS-EXAMINATION OF MS. SETTIMI

Q. I said Forall had already made a decision that they wouldn't continue to operate the store after September 1, 2016, right?

If this is helpful, Ms. Settimi, you just testified if they had informed Sarah of that. I'm asking now if they had made that decision that they would not continue to operate the store after September 1, 2016, right?

THE ARBITRATOR: Can you hear us, Ms. Settimi?

THE WITNESS: Yes.

THE ARBITRATOR: Is the answer "yes," they had made that decision?

THE WITNESS: Yes.

THE ARBITRATOR: Okay. Go ahead.

Q. So the store ended up closing one month before Sarah was set to -- Forall was set to cease operation of the store, right?

THE ARBITRATOR: Counsel,

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CROSS-EXAMINATION OF MS. SETTIMI

Q. You're aware that Forall had informed Sarah that Forall would no longer operate the store after the term expired in September -- September 1, 2016, right?

A. Yes.

Q. Forall had made that decision that it wouldn't operate the store going forward after that date, right?

MR. BROWN: Objection. What date?

THE ARBITRATOR: What's the objection, Counselor?

MR. BROWN: He said June 1st, I think.

MR. LEWIS: I did not.

THE ARBITRATOR: No. He said September 1st.

MR. BROWN: Okay. Then I withdraw my objection.

THE ARBITRATOR: Go ahead.

Q. Do you remember the question, Ms. Settimi?

A. No.

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can I ask the same thing? I kind of pushed Mr. Brown to truncate. I mean, I know this from other witnesses. We could have a whole argument. Did they really decide or did they want another 60 days.

I know all this testimony. This is a financial person. I'm just not sure what we are accomplishing with this witness with this area that I don't already know.

THE WITNESS: Mr. Farber, can I say something to you?

THE ARBITRATOR: No. Just Mr. Lewis.

THE WITNESS: Okay.

MR. LEWIS: It really speaks to -- Mr. Farber, I'm not going to yell into the wind. I actually like that term and I'm going to use it. But does really speak to the degree of how much they were impacted by a month,

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 but, you know, what it's not
3 worth pursuing. I've got another
4 line of questioning.

5 THE ARBITRATOR: Let's move
6 on.

7 Q. Ms. Settimi, what efforts did
8 Forall do to find a new operator for
9 the Las Vegas store after August of
10 2016?

11 A. I don't know. It wasn't my
12 responsibly.

13 Q. Whose responsibly would that
14 have been? Ms. Settimi, whose
15 responsibility would that have been?

16 A. Headquarters, marketing. Not a
17 back office.

18 Q. But are you aware whether Forall
19 made any efforts to find a new operator
20 for Las Vegas after August of 2016?

21 A. I don't know.

22 Q. Do you know whether Forall made
23 any efforts to pursue another location
24 in Las Vegas after August 2015?

25 A. I don't know.

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 location in Beverly Hills after August
3 of 2016?

4 A. No, I'm not.

5 Q. Now, you said that it wouldn't
6 have been your responsibility as a back
7 office accounting person to make
8 decisions about where to open new
9 stores; you testified a few minutes ago
10 to that, correct?

11 A. Yes.

12 Q. But earlier in your testimony
13 you said that it would have taken some
14 time. I believe Mr. Brown was -- was
15 offering you four to five years before
16 you would have opened a new store in
17 Las Vegas; do you remember testifying
18 as such?

19 A. Mr. Lewis, I have many different
20 responsibilities for all of my clients.
21 I do different things for different
22 people. I'm speaking specific to
23 Forall.

24 Q. I completely understand. I can
25 appreciate that.

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 Q. Do you know whether Forall made
3 any efforts to pursue another location
4 in Chicago or New York after August of
5 2016?

6 A. Not to my knowledge.

7 Q. And you testified that Chicago
8 and New York were cities that the
9 doctors had been approved to open
10 stores back in the license agreement,
11 correct?

12 A. Yes.

13 Q. Do you know -- are you aware
14 that the doctors were pursuing or
15 inquiring about a Beverly Hills
16 location? Are you aware of that?

17 MR. BROWN: Objection. She
18 sat through that testimony.

19 Maybe you can clarify.

20 THE ARBITRATOR: Do you know
21 about it from other than the
22 testimony you heard?

23 THE WITNESS: No.

24 Q. But are you aware of whether
25 Forall made any efforts to pursue a

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1 CROSS-EXAMINATION OF MS. SETTIMI

2 A. I'm only -- I'm trying to answer
3 as precisely as possible.

4 Q. You're doing a really good job.
5 Trust me, I'm just trying to ask these
6 last few questions to make sure I cover
7 all the bases. Okay?

8 A. Okay.

9 Q. So you testified it would have
10 taken a few years before you were able
11 to reopen in Las Vegas; do you remember
12 testifying as such?

13 A. Yes.

14 Q. Now, what are you basing that
15 on, Ms. Settimi, if you're saying this
16 wasn't part of your responsibilities
17 whether and where to pursue
18 additional --

19 A. First of all, I know how long it
20 takes to just get all the furniture,
21 and fixtures, all the plans, all the
22 permits, all the set up. I mean, it's
23 not going to be over night. That's --
24 I know what it takes to set up a store.

25 Q. Okay. Do you know whether

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1 CROSS-EXAMINATION OF MS. SETTIMI
2 Forall undertook any of those efforts
3 after August of 2016?

4 A. I do not.

5 Q. Ms. Settimi, is it your opinion
6 that it may have taken a while, but
7 would Forall have been able to open
8 another store in Las Vegas --
9 withdrawn.

10 Were you aware that Forall was
11 requiring a brokerage fee to bring in
12 an operator to operate the store in
13 2014?

14 A. No.

15 MR. BROWN: Objection.

16 THE ARBITRATOR: She
17 answered already. She said,
18 "No."

19 MR. LEWIS: Mr. Farber, may
20 I just have five minutes? I may
21 not have anything further.

22 THE ARBITRATOR: Mr. Brown,
23 are you going to have anything
24 further or do you want the same
25 five minutes?

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1 PROCEEDINGS

2 MR. BROWN: We'll take the
3 five. Well, remember you had the
4 witnesses take notes, so I want
5 to reserve the opportunity for
6 Ms. Settimi to talk to me.

7 THE ARBITRATOR: Mr. Lewis,
8 do you have a problem to save
9 time with our speaking now to
10 Mr. Brown about any notes that
11 you took.

12 Did you take any notes?

13 THE WITNESS: No.

14 THE ARBITRATOR: She has no
15 notes.

16 MR. BROWN: I won't talk to
17 her, but I do intend to ask one
18 or two follow-up questions.

19 THE ARBITRATOR: Okay. I
20 think we are ready for our mid
21 morning break. I've got 11:10,
22 so let's come back at 11:25.
23 Let's finish this witness, and
24 we'll go to Ms. Gioffre. Thank
25 you.

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1 PROCEEDINGS

2 (Whereupon, a recess was
3 taken at this time.)

4 THE ARBITRATOR: Mr. Lewis,
5 anything further?

6 MR. LEWIS: Nothing further.

7 THE ARBITRATOR: Anything
8 further, Mr. Brown?

9 MR. BROWN: No, sir.

10 THE ARBITRATOR: Thank you
11 very much for your testimony. We
12 appreciate it. You're excused as
13 a witness.

14 Who is our next witness?

15 MR. BROWN: Crowe is going
16 to handle this one.

17 MR. CROWE: Mr. Farber, we
18 are going to call Michelle
19 Gioffre.

20 THE WITNESS: Good morning.

21 THE ARBITRATOR: Hi,
22 Ms. Gioffre. Good morning. Can
23 you please stand, but I still
24 want to be able to see your face?

25 THE WITNESS: Okay.

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1 PROCEEDINGS

2 THE ARBITRATOR: Great.
3 Okay. And let's wait for -- we
4 want you to be alone in the room,
5 all right?

6 Ms. Gioffre, would you
7 raise your right hand, please.
8 Do you solemnly swear the
9 testimony you're about to give in
10 this arbitration proceeding will
11 be the truth, the whole truth,
12 and nothing but the truth?

13 THE WITNESS: Yes.

14 THE ARBITRATOR: Could you
15 be seated and spell your full
16 name for me, and can you please
17 give me an address, which can be
18 either home or work, your choice.

19 THE WITNESS: My name is
20 Michelle Gioffre. One second.
21 Excuse me.

22 THE ARBITRATOR: How do you
23 spell "Gioffre"?

24 THE WITNESS: G-I-O-F-F-R-E.

25 THE ARBITRATOR: And what's

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PROCEEDINGS

an address, please?

THE WITNESS: 7 Suttin Place, Bridge Burgh, New York 10509.

THE ARBITRATOR: Miss Gioffre, Mr. Crowe, the gentleman in the blue shirt, is going to be asking you some questions. What I'd like you to do is listen to each question, pause and then Mr. Lewis, who is wearing a white shirt, is -- if he says the word "objection," do not answer the question until I tell you whether or not you should do so.

Please be sure to pause after each question that Mr. Crowe enunciates so that Mr. Lewis has the ability to say the word "objection," all right? Don't jump in right away with an answer, okay.

Mr. Crowe, why don't you proceed.

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DIRECT-EXAMINATION OF MS. SETTIMI

Q. Okay. And how long have you been doing this work?

A. I've been with Palma 20 years.

Q. And in the course of doing this accounting work for clientele in the Italian fashion industry, do you have some understanding as to the financials of these particular companies?

A. Yes.

Q. Okay. So in connection with that, do you understand the -- the term margin or cost as its generally defined in that industry?

A. Yes.

Q. And can you tell me what has been your experience in terms of what margin or cost is, generally, seen in terms of wholesale, Italian menswear companies?

MR. LEWIS: Objection.

Vague question, Mr. Farber.

THE ARBITRATOR: Overruled.

You can answer.

A. So in my experience, it usually

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DIRECT-EXAMINATION OF MS. SETTIMI

MR. CROWE: Thank you. I'm going to be brief with this witness.

MICHELLE GIOFFRE, the witness herein, having been first duly sworn by the arbitrator, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. CROWE:

Q. Ms. Gioffre, can you tell me by whom are you employed?

A. I'm employed by Palma Settimi.

Q. And what are your job duties and responsibilities?

A. I'm the inhouse CPA for the company. I review the work of the staff and the accountants here. I assist in preparing their financial statements for the clients that we work for. I kind of do it all.

Q. Okay. That's good. What type of clientele do you -- do you work for?

A. They're all in the fashion industry.

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DIRECT-EXAMINATION OF MS. SETTIMI

ranges that the cost of the product would be between 35 and 40 percent.

Q. And then on top of the product, that's the actual manufacturing cost, it's a certain duty and freight that might be added to that; is that correct?

A. Yes, that is correct. There's duty and freight, and that makes up your incoming cost.

THE ARBITRATOR: Why don't we get this in more detail? If one of your clients like Forall sells a garment for \$1,000 in the accounting for that \$1,000, how much would be for cost of production, how much would be for other items?

THE WITNESS: Okay. So the cost on 1,000 --

THE ARBITRATOR: We lost you. You froze.

Q. Are you there, Ms. Gioffre?

THE ARBITRATOR: Ms.

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 Gioffre.

3 THE WITNESS: I'm here.

4 THE ARBITRATOR: Were you
5 able to hear my question?

6 THE WITNESS: I was.

7 THE ARBITRATOR: I wasn't
8 able to hear your answer, so
9 please repeat what you said.

10 THE WITNESS: The cost on
11 the product would range between
12 350 and \$400.

13 THE ARBITRATOR: The cost to
14 produce the garment would be
15 between 350 and \$400, all right,
16 except that Forall, the
17 hypothetical manufacturer here,
18 would also have other expenses,
19 right?

20 THE WITNESS: Correct. They
21 have incoming costs that would go
22 with that.

23 THE ARBITRATOR: And what
24 would be the usual profit margin?

25 THE WITNESS: It would

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 probably be roughly 45 to
3 50 percent is usually the profit.

4 THE ARBITRATOR: That would
5 be gross profit?

6 THE WITNESS: Yes.

7 THE ARBITRATOR: So the
8 other 15 or 20 percent would be
9 for soft costs?

10 THE WITNESS: It should be.

11 MR. CROWE: Mr. Farber, I
12 wasn't following your question.

13 THE ARBITRATOR: I asked if
14 the other 15 or 20 percent would
15 be for soft cost.

16 MR. CROWE: Okay.

17 THE WITNESS: I believe so.
18 I'd have to look in detail at the
19 financial statements. I don't
20 remember offhand exactly what
21 they were.

22 THE ARBITRATOR: Okay. All
23 right, go ahead, sir, Mr. Crowe.

24 Q. Mr. Farber was asking about the
25 soft cost. Are we talking about the

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 freight and duty in that circumstance
3 to get you up to 40, 45 to 50 or 55,
4 60; is that what you're talking about?
5 Do you understand?

6 A. I'm sorry. I didn't understand
7 the question.

8 THE ARBITRATOR: When I
9 asked about soft cost, what do
10 you understand I was referring
11 to?

12 THE WITNESS: I think it
13 would be the incoming cost.

14 THE ARBITRATOR: Like what?

15 MR. LEWIS: We ask the
16 witness to answer your question,
17 and not --

18 THE ARBITRATOR: I'm waiting
19 for her to answer. Like what?

20 THE WITNESS: Soft cost I
21 was presuming to be more like the
22 incoming cost, the freight, and
23 duty and transportation fees.

24 MR. CROWE: That's all I
25 have. Thank you.

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1 DIRECT-EXAMINATION OF MS. SETTIMI

2 THE ARBITRATOR: Okay.

3 Mr. Lewis, do you have any
4 questions?

5 MR. LEWIS: Yes. Thank you,
6 Mr. Farber.

7 THE ARBITRATOR: Just hold
8 one second. So the numbers that
9 you're roughly giving me, were
10 these numbers, as far as you
11 know, numbers which -- before I
12 was using Forall as an example,
13 but now I want to ask you say for
14 the years '13, '14, were these
15 the actual numbers for Forall?

16 THE WITNESS: I -- I don't
17 recall off the top of my head.
18 I'd have to go back and look.
19 It's pretty standard. The
20 company has been pretty standard
21 over the time that I've worked
22 for them. They haven't deviated
23 much from their margins.

24 THE ARBITRATOR: You're
25 talking about the company being

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1 DIRECT-EXAMINATION OF MS. SETTIMI
2 Forall, right?

3 THE WITNESS: Forall,
4 correct.

5 THE ARBITRATOR: And when
6 you say "it's pretty standard,"
7 you're talking about all the way
8 going back to how far?

9 THE WITNESS: From what I
10 recall, from what I remember, I
11 -- there's no particular year
12 that would stand out as very
13 different for me.

14 THE ARBITRATOR: No. No.
15 What I'm asking is: How long
16 have you done work for the Forall
17 account?

18 THE WITNESS: Probably about
19 five, six years, seven years.

20 THE ARBITRATOR: Okay.
21 Thank you, Ms. Gioffre.

22 All right, Mr. Lewis.

23 MR. LEWIS: Thank you,
24 Mr. Farber.

25 * * *

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 Q. Sure. Do you have those
3 available?

4 MR. CROWE: Objection,
5 Mr. Farber. Again, it sounds
6 like my colleague is looking to
7 initiate a discovery proceeding
8 in the middle of the hearing, and
9 hopefully it will be the last day
10 of the hearing.

11 THE ARBITRATOR: She can
12 answer if it's available, then
13 we'll see if it's a request, then
14 we'll figure out what we want to
15 do with it, if anything.

16 Are such figures available?

17 THE WITNESS: I would have
18 to go back and look. I believe
19 it would be available. I have to
20 go check. I don't know off the
21 top of my head.

22 MR. LEWIS: All right.
23 Mr. Farber, Ms. Settimi, and not
24 to misquote her testimony at all,
25 but my takeaway was Ms. Gioffre

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 CROSS EXAMINATION BY
3 MR. LEWIS:

4 Q. Hello, Ms. Gioffre. I'm going
5 to ask you about your role. Were you
6 working with miss Settimi's firm in
7 2012?

8 A. I was.

9 Q. Okay. And are you familiar with
10 the purchases that Forall -- excuse me
11 -- that Sarah made from Forall in 2012
12 or 2013?

13 A. Not specifically those
14 purchases. I -- I work more on a
15 global standard. I review the
16 financial statements. I don't -- I
17 wouldn't review Sarah specifically.

18 Q. Okay. Were you familiar with
19 the sales that the Las Vegas store was
20 doing, let's say from the time it was
21 open in 2011, are you familiar with
22 those figures?

23 A. I have to go back and look at
24 them per year, yes. I don't remember
25 them off the top of my head.

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 was the one closer to the sales
3 figure and this is who we should
4 direct these questions to.

5 THE ARBITRATOR: Her precise
6 answer was "possibly," when you
7 asked her if she had the
8 information. She didn't know for
9 sure. The testimony is what it
10 is.

11 Next question, Mr. Lewis.

12 Q. Ms. Gioffre, are sales figures
13 from the Las Vegas available to you?

14 MR. CROWE: Objection,
15 available, again he's depending
16 on -- in the next hour, the next
17 30 days?

18 THE ARBITRATOR: Hold on.
19 First of all, you're talking
20 about for the entire time of the
21 existence of the Las Vegas store,
22 Mr. Lewis?

23 MR. LEWIS: Five years.

24 THE ARBITRATOR: You're
25 talking about for the whole five

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 years?

3 MR. LEWIS: Yes.

4 THE ARBITRATOR: You can
5 answer if they're available.

6 Were they available to you?

7 THE WITNESS: I don't
8 believe. I'd have to check that
9 they're available for the full

10 five years, only the years that
11 we were, actually were in charge
12 of the store.

13 Q. So for 2015 and 2016, those
14 sales figures, are available to you?

15 A. I believe they are.

16 Q. Would that be difficult for you
17 to retrieve?

18 MR. CROWE: Objection.

19 That's irrelative to term.

20 Difficult in the context of a
21 hearing.

22 THE ARBITRATOR: Counselor,
23 it really doesn't matter. The
24 overall point is, why wasn't this
25 done in discovery? I mean, I

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 to.

3 THE ARBITRATOR: She might
4 have been, but, you know, it's
5 not -- we are here today at the
6 trial of this matter, and you
7 know, if you and your client was
8 not able to get these figures
9 and, of course, your client
10 presumably had the figures for
11 the time period that it ran the
12 store, then there certainly was
13 an adequate opportunity to get
14 it.

15 But in any event, the
16 question that's pending is: Is
17 it difficult for you to get? You
18 can answer the question if it's
19 difficult to get.

20 THE WITNESS: I'm -- I
21 believe I would be able to find
22 them with some time.

23 THE ARBITRATOR: Okay.

24 Q. How much time would you need,
25 Ms. Gioffre?

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 don't understand. You know, if
3 you were interested in getting
4 these figures, you could have
5 either requested them directly
6 from Forall or if Forall said no,
7 then, you know, there could have
8 been a subpoena that was served.
9 I mean, I don't know where we're
10 going with this.

11 MR. LEWIS: Well, Mr.
12 Farber, I'll be happy to explain
13 the answer to those questions.
14 We had discovery requests that
15 should have these listed, these
16 sales figures. They were not
17 forthcoming from Forall, and then
18 we were able to receive them from
19 Simon, and we are making every
20 effort to get these as part of
21 the record.

22 And, again, in talking to
23 Ms. Settini, my take away was
24 that Ms. Gioffre was the correct
25 witness to pose these questions

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 A. I don't know. A day, two days,
3 a week. I have to actually go see what
4 we have. I only ask -- I don't know if
5 they're on my server or if they're in
6 boxes on the warehouse stored away.

7 Q. Were you -- did you help provide
8 sales figures for Mr. Torello-Viera to
9 review for his testimony?

10 A. I did not.

11 Q. Do you know who did?

12 A. I don't.

13 Q. Did you provide any documents to
14 Mr. Brown or Mr. Crowe in preparation
15 for this arbitration?

16 MR. CROWE: We would object
17 to, obviously, any kind of
18 testimony that involves
19 attorney-client conversation.

20 THE ARBITRATOR: Fair
21 enough.

22 So, Ms. Gioffre, you can
23 answer. Did you provide "yes,"
24 "no," you don't remember, but
25 don't tell us anything about the

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CROSS-EXAMINATION OF MS. GIOFFRE
nature of the documents.

THE WITNESS: Yes.

THE ARBITRATOR: Okay.

Q. Do you have an appreciation what
the sales were for the store while
Italnord operated?

A. No.

Q. Do you know whether there was an
agreement between Forall and Italnord
as it relates to the Las Vegas store?

MR. CROWE: Can you repeat
that question?

THE ARBITRATOR: Do you know
if there was an agreement between
Forall and Italnord regarding the
Las Vegas store?

MR. CROWE: I'm sorry,
Mr. Farber, just note for the
record, I see the next witness
has joined us in the -- in the
proceeding here.

THE ARBITRATOR: I do.
Mr. Flaherty, welcome.

A. I vaguely recall there was an

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CROSS-EXAMINATION OF MS. GIOFFRE
operating agreement of sorts.

Q. You testified in your testimony
that there was an agreement between
Forall and Italnord?

THE ARBITRATOR: No. The
testimony was she vaguely
recalls. Go ahead.

MR. LEWIS: Is that go ahead
to my question, Mr. Farber, or
are you asking me to restate the
question?

THE ARBITRATOR: Go right
ahead and ask your next question.

Q. Do you know if that agreement
was produced in the course of discovery
in this litigation?

A. I don't know.

Q. Are you familiar with the
contents of that agreement between
Forall and Italnord as it relates to
the Las Vegas store?

A. I don't. No specific, no.

Q. Have you seen that agreement
yourself?

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CROSS-EXAMINATION OF MS. GIOFFRE

A. As I said, I vaguely recall
there being one. I would have to go
back and look for it. I don't recall
off the top of my head. I'm sorry.

Q. I appreciate it, but that vague
recollection, is that based on your
personal knowledge? Did you see the
agreement?

MR. CROWE: Objection. I
think the witness has answered
the question.

THE ARBITRATOR: No. If the
witness says, "I have a vague
recollection," certainly, on
cross counsel is entitled to
probe and try to refresh her
memory with questions. So
overruled.

You can answer.

A. Can you ask the question one
more time? I'm sorry.

MR. LEWIS: Ms. Artiles, can
you read it back?

(Whereupon, a portion of the

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CROSS-EXAMINATION OF MS. GIOFFRE
record was read back.)

THE ARBITRATOR: You can
answer.

A. I don't think -- no. I don't
recall. I really don't. I don't
recall.

Q. Ms. Gioffre, what was Forall's
gross profit margins for the Las Vegas
store in 2016?

A. I don't recall off the top of my
head. I'd have to go back and look.
Forall, Nevada?

Q. That's correct.

A. I don't know. I don't recall.

Q. Did you prepare the financial
statements for Forall?

A. Yes.

Q. Did you review any documents for
your testimony?

A. Very little today. I --

Q. I'm not talking specifically
about today. Did you review documents
in preparation for your testimony?

A. I reviewed -- yes.

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 Q. What documents were those?

3 MR. LEWIS: If Mr. Brown
4 doesn't have an objection, I'd
5 ask --

6 THE ARBITRATOR: I'm sorry.

7 MR. BROWN: You know what, I
8 do have an objection. My
9 objection, Mr. Farber, is I just
10 looked at the claimant's document
11 demands in this case and nowhere
12 in them do they request sales
13 reports between Forall and Simon.
14 They never asked for this stuff.

15 THE ARBITRATOR: Mr. Brown,
16 I think we are beyond that. The
17 question right now is: Did she
18 review documents in preparation
19 for her testimony, not
20 necessarily today. Do you have
21 any objection to that question?

22 MR. BROWN: I have an
23 objection in how this is being
24 conducted, in that he's trying to
25 get to documents that he should

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 A. I -- I reviewed some of the
3 Sarah accounts receivable papers, and I
4 looked at some of the Forall financial
5 statements for the years in question.

6 Q. What years were those?

7 A. I looked at 2015 and '16
8 briefly.

9 MR. LEWIS: But before I go
10 on, Mr. Farber, just to make sure
11 that we are handling this
12 efficiently, I believe Mr. Crowe
13 presented this witness, so I'm
14 getting objection from both of
15 the attorneys, and I know --

16 THE ARBITRATOR: Correct.
17 That's a fair point. We are not
18 going to tag team. We wouldn't
19 mind hearing from Mr. Shah; he is
20 probably pretty good, but we are
21 not going to tag team. So it
22 will just be Mr. Crowe, all
23 right.

24 Next question. Go ahead.

25 Q. When you reviewed Forall's

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 have had already brought a motion
3 to compel or actually asked for.

4 THE ARBITRATOR: Mr. Brown,
5 we're not there yet. Let's go.
6 Mr. Lewis can run the exam how he
7 chose the same way you do and
8 Mr. Crowe does. So the question
9 is: Do you have an objection to
10 what's pending right now?

11 MR. BROWN: If the objection
12 does stand that if she was shown
13 documents by counsel, she should
14 not be being asked about that,
15 but if she reviewed documents, I
16 guess --

17 MR. LEWIS: That's
18 absolutely incorrect. And, Mr.
19 Farber, let me also note that Mr.
20 Crowe --

21 THE ARBITRATOR: Mr. Lewis,
22 when you win, you don't have to
23 argue further as you well know.

24 So you can answer the
25 question, Ms. Gioffre.

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 financial statement from 2015, 2016,
3 did you specifically review the Las
4 Vegas stores financials?

5 A. No.

6 Q. Did you review the overall
7 company's financials?

8 A. Yes.

9 Q. What was Forall's gross profit
10 margin for 2015?

11 MR. CROWE: Objection.
12 Relevance. We're talking about a
13 store in Las Vegas. This is a
14 company that sells worldwide. I
15 don't follow the relevance, so I
16 know we are not limited by the
17 scope, but this seems to be
18 pretty far field about what the
19 controversy is about.

20 THE ARBITRATOR: Overruled.
21 You can answer.

22 A. I don't recall. I have to go
23 back and look at them.

24 MR. LEWIS: Mr. Farber, in
25 this instance where Ms. Gioffre

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 testified that they reviewed this
3 document for her testimony. She
4 even started off with "today." I
5 would ask that she make those --
6 she reacquaints herself with
7 those documents and answer
8 questions.

9 MR. CROWE: Objection. It's
10 improper. Directing the witness
11 to go back and look at some
12 documents so she can answer
13 questions in the middle of an
14 examination.

15 THE ARBITRATOR: Ms.
16 Gioffre, you told me when I asked
17 you some questions before, that
18 consistently Forall was -- it had
19 a gross profit margin between 45
20 and 50 percent. Was that the
21 case, to the best of your memory,
22 for '15 and '16 as well?

23 THE WITNESS: Yes, sir. It
24 was.

25 THE ARBITRATOR: Okay. The

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 again. There we go. Okay. I
3 think it's probably a weak
4 internet connection. All right.
5 My question was: What's the
6 difference between gross and net
7 when you do the profit
8 calculation on the financials?

9 THE WITNESS: It would be
10 your operating expense.

11 THE ARBITRATOR: Okay. You
12 have a range? You said gross was
13 between 45 and 50; what would the
14 range be for the net?

15 THE WITNESS: I'd have to go
16 back and look at that specific
17 year. They all range based on
18 different expenses that they
19 would have had. I don't recall
20 Forall's specifically.

21 THE ARBITRATOR: Okay.
22 Without a specific number, do you
23 recall a range for '15 to '16 for
24 Forall?

25 THE WITNESS: I don't.

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 objection is sustained. Next
3 question.

4 Q. Are you aware of Forall's net
5 profit margins for those same years?

6 MR. CROWE: I just renew my
7 objection in terms of relevance,
8 outside the scope, completely
9 immaterial.

10 THE ARBITRATOR: It's
11 overruled.

12 You can answer.

13 A. The -- I don't recall the exact
14 amounts, the exact number.

15 THE ARBITRATOR: Do you
16 recall a range, the way you did
17 for the gross profit margin?

18 THE WITNESS: No, I don't.

19 THE ARBITRATOR: What is
20 deducted when you change the
21 gross to net on profit?

22 THE WITNESS: Really --
23 you're asking for -- for --
24 sorry.

25 THE ARBITRATOR: We lost her

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 THE ARBITRATOR: Okay.

3 Mr. Lewis, go ahead.

4 Q. Ms. Gioffre, what was the net
5 profit margin, do you recall, for the
6 Forall Nevada store?

7 A. I don't recall. I didn't get
8 down to the net profits. I don't
9 remember.

10 Q. Do you recall sufficiently to
11 give Mr. Farber a range?

12 A. I -- I believe I just said no, I
13 didn't recall.

14 Q. That's what I was asking for,
15 the specific number. I was asking a
16 different question to see if you could
17 give us a range.

18 MR. CROWE: Objection.

19 Asked that question.

20 Q. Is that a "yes" or "no," Ms.
21 Gioffre, are you able to give us a
22 range or not?

23 A. Not off the top of my head, sir.

24 THE ARBITRATOR: Ms.
25 Gioffre, do you have a number --

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 maybe we'll approach it a
3 different way -- do you have a
4 memory of what the operating
5 expense was as of percentage for
6 Forall, roughly, in the years we
7 are talking about?

8 THE WITNESS: I don't. I
9 don't know off the top of my head
10 what it would be.

11 THE ARBITRATOR: You don't
12 have a memory if it was 25, 30
13 something like that, 40?

14 THE WITNESS: Specifically,
15 no. Industry standard would tell
16 me it would be roughly 20 percent
17 of the operating cost.

18 THE ARBITRATOR: What's the
19 basis of that testimony? How do
20 you know that?

21 THE WITNESS: Well, my
22 experience with -- from my
23 experience, I -- you know,
24 there's rent, there's payroll
25 cost, there's all the other

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 categories of expense that made
3 it not profitable? I shouldn't
4 say expense, because it made a
5 depreciation, which is not an
6 expense so there may have been
7 other write-offs, and I'm not
8 necessarily talking about, you
9 know, taxable profits.

10 Do you have any information
11 in that regard that you can tell
12 me about?

13 MR. CROWE: Mr. Farber, I'm
14 going to object. You're asking
15 the witness about the global
16 operation for Forall?

17 THE ARBITRATOR: Yes.

18 THE WITNESS: There was --
19 certainly there was depreciation.
20 There may have been an inventory
21 write down that would have
22 possibly caused them to show a
23 non-cash expense -- loss, excuse
24 me.

25 THE ARBITRATOR: Do you have

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 operating cost. It could range
3 between 20, 25 percent, maybe. I
4 don't recall Forall specifically.

5 THE ARBITRATOR: Okay. Go
6 ahead, Mr. Lewis.

7 Q. Ms. Gioffre, were you involved
8 when Forall was winding down the store
9 in 2016? Were you involved in that
10 process?

11 A. Somewhat, yes.

12 Q. Are you familiar with the amount
13 of inventory that was present at the
14 store in August of 2016?

15 A. I -- I believe there was
16 approximately \$700,000.

17 THE ARBITRATOR: I just want
18 to go back and approach this a
19 different way. Look, Ms. Settini
20 testified that to the best of her
21 knowledge, that Forall was not
22 profitable during the years that
23 we are talking about.

24 Do you have a memory from
25 the financial records of the

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 any memory of unusually high
3 operating expenses?

4 THE WITNESS: I don't
5 recall.

6 THE ARBITRATOR: Anything
7 else particularly high tax
8 liability or something?

9 THE WITNESS: No. They
10 should not have had a tax
11 liability.

12 THE ARBITRATOR: Okay.
13 Thank you.

14 Mr. Lewis, go ahead.

15 Q. You testified Ms. Gioffre that
16 you thought there was approximately
17 \$700,000 of merchandise in the store in
18 August of 2016, correct?

19 A. Yes.

20 Q. That was a gross value or that
21 included the mark-up?

22 A. No. That -- that should have
23 been the value on the book.

24 Q. Do you have an appreciation for
25 how much Forall was able to sell that

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 merchandise for?

3 A. I don't. I don't.

4 THE ARBITRATOR: Well,
5 before the appreciation, do you
6 know that it was actually sold?

7 THE WITNESS: I don't,
8 actually.

9 THE ARBITRATOR: Okay.

10 Q. I believe Mr. Torello-Viera
11 testified that it was sold, but you
12 don't remember -- you don't recall
13 whether it was or not; is that your
14 testimony, Ms. Gioffre?

15 A. That's correct.

16 Q. Do you have any evidence of
17 opportunities that were lost as a
18 result of the store closing in August
19 of 2016?

20 A. I wouldn't know that.

21 Q. Are you aware of any specific
22 efforts that Forall took to find and
23 open another store in the Las Vegas
24 market after August of 2016?

25 A. No.

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 Q. So we've got copies of invoices,
3 we've got masters, including purchase
4 invoices, and some incoming cost
5 documents relating to duty and freight;
6 did I hear that correctly?

7 A. Yes. Masters and purchases are
8 the same.

9 Q. Yes. I understand.

10 A. Yes.

11 Q. Anything else?

12 A. Not that I recall right now. I
13 have to double-check. Whatever he
14 asked me for, and I had, I would have
15 given to him.

16 Q. I understand. Let me ask you
17 specifically about a reference to a
18 document called, "Simon Lost Margin
19 versus Sarah"; do you know what that
20 document is?

21 A. No.

22 THE ARBITRATOR: Is this
23 something in evidence, Counselor?

24 MR. LEWIS: This is
25 something that is listed on Mr.

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 Q. Are you familiar or do you have
3 any evidence of any efforts that Forall
4 took to establish a Forall -- excuse
5 me, a Pal Zileri store in any other
6 U.S. market after August of 2016?

7 A. No.

8 Q. Did you provide information to
9 Mr. Flaherty that he relied upon to
10 draft his expert report in this
11 arbitration?

12 A. Yes.

13 Q. And what did you provide to him?

14 A. We provided copies of the
15 invoices, some invoices, we provide, I
16 believe, all the mass masters, which
17 were the Forall's --

18 Q. Sorry. When you say "masters,"
19 and I didn't hear you after that.

20 A. And those were the -- the
21 invoices, the purchase invoices, and we
22 -- I believe provided him with some
23 incoming cost documents, like the
24 utility bills and freight invoices, I
25 believe. That's what I gave him.

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1 CROSS-EXAMINATION OF MS. GIOFFRE

2 Flaherty's report as being the
3 source of certain information.

4 THE ARBITRATOR: Okay. Go
5 ahead.

6 Q. Again, "Simon Cost Margin versus
7 Sarah," do you know what that is?

8 A. No. I don't think so, no.

9 Q. This is not a document that you
10 provided to Mr. Flaherty?

11 A. I don't recall. I have to see
12 it. I don't recall.

13 Q. We'd like to see it, too. Do
14 you recall being asked to create
15 something that was called "Simon cost
16 Margin versus Sarah?"

17 MR. LEWIS: Mr. Farber, if
18 you're looking at the report,
19 it's in schedule -- we are going
20 to talk about it in just a little
21 bit, but it's in Schedule 3 of
22 Mr. Flaherty's report, and it's
23 towards the bottom of the
24 spreadsheet, and it says that the
25 source was, "Sample Loss Margin

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 Versus Sarah."

3 Q. Does that ring a bell, Ms.
4 Gioffre?

5 A. No.

6 MR. CROWE: Beating this
7 horse to death here.

8 THE ARBITRATOR: I didn't
9 hear you, Mr. Crowe.

10 MR. CROWE: I said this has
11 been covered. Asked and
12 answered.

13 THE ARBITRATOR: She
14 answered anyway, so I've got it.

15 Go ahead, next question.

16 Q. So when I had asked you if we
17 had exhausted what you had provided to
18 Mr. Flaherty, copies of invoices,
19 masters, which are the purchase
20 invoices, some incoming costs, the
21 documents related to duty and freight,
22 anything else?

23 MR. LEWIS: Mr. Crowe, I'm
24 just waiting for the witness to
25 answer if there's anything else

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1 RE-DIRECT EXAMINATION MS. GIOFFRE

2 MR. CROWE: Yes, I do,
3 Mr. Farber. I just want to
4 clarify a particular point. It's
5 in context to a question you had
6 raised.

7 RE-DIRECT EXAMINATION
8 BY MR. CROWE:

9 Q. Miss, in the circumstance where
10 there's a \$900,000 annual sale for this
11 store in Las Vegas, and assuming the 45
12 to 50 percent margin or cost for the
13 items that are sold, would it be fair
14 to say that there is a profit that
15 would be expected or anticipated on
16 each one of these annual sales of the
17 \$900,000 to the Las Vegas store?

18 A. Yes. Of course.

19 Q. Profit of \$450,000 less
20 advertising expense?

21 A. Yes. That would be reasonable,
22 yes.

23 MR. CROWE: Okay. Thank
24 you. That's all.

25 THE ARBITRATOR: Anything

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1 CROSS-EXAMINATION OF MS. GIOFFRE
2 that we've missed.

3 MR. CROWE: Well, you've
4 asked her three times already.

5 THE ARBITRATOR: Overruled.
6 She can answer. Is there
7 anything else you provided that
8 you remember?

9 THE WITNESS: Not that I
10 recall.

11 MR. LEWIS: Mr. Farber, may
12 I just take a couple of minutes?
13 I may not have anything further.

14 THE ARBITRATOR: Sure. All
15 right. Let's give him the
16 customary five and then hopefully
17 we can get started with
18 Mr. Flaherty.

19 (Whereupon, a recess was
20 taken.)

21 THE ARBITRATOR: Mr. Lewis,
22 anything further?

23 MR. LEWIS: Nothing further.

24 THE ARBITRATOR: Mr. Crowe,
25 do you have anything further?

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1 PROCEEDINGS

2 else, Mr. Lewis. I can't hear
3 you, Mr. Lewis.

4 MR. LEWIS: Do you hear me
5 now?

6 THE ARBITRATOR: Yes.

7 MR. LEWIS: Nothing further.

8 THE ARBITRATOR: Ms.
9 Gioffre, thank you very much for
10 your testimony. You're excused
11 as a witness.

12 THE WITNESS: Thank you.

13 THE ARBITRATOR: Thank you.
14 Okay. Mr. Crowe, who is your
15 next witness? I'm sorry.

16 MR. CROWE: The next
17 witness, Mr. Farber, is Mr.
18 Flaherty, but in light of the
19 fact that we are approaching a
20 lunch time hour, maybe it makes
21 more sense if we could take lunch
22 to gather our notes and get this
23 presentation done quickly, and
24 efficient, and I think I'm going
25 to be probably a half --

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PROCEEDINGS

45 minutes top with this witness.

THE ARBITRATOR: The problem

I have is the reason I always tell people in the beginning that lunch is 1:00 to 2:00 is because I schedule other calls in other cases, so have a call on another case at 1:00, so I'd rather keep going.

MR. CROWE: That's fine.

THE ARBITRATOR: So, Mr. Flaherty, would you stand for a minute, but let me still see your face. Could you raise your right hand? Do you solemnly swear the testimony you're about to give in this arbitration proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

THE ARBITRATOR: Could you be seated, sir, spell your full name, and let us have an address,

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DIRECT-EXAMINATION MR. FLAHERTY show it to you, he'll show it to you. All right?

THE WITNESS: Okay.

MR. CROWE: For purposes of trying to move things along, I'm going to ask that the report prepared by Mr. Flaherty be pulled up and made available to the witness with the arbitrator's permission.

THE ARBITRATOR: Sure.

KEVIN FLAHERTY, the witness herein, having been first duly sworn by the arbitrator, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. CROWE:

Q. Good afternoon, Mr. Flaherty.

A. Good afternoon.

Q. So just to give everybody some background, can you tell us your education, your experience?

A. Sure. I have a bachelor of science and major in accounting from

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home or work.

THE WITNESS: Kevin Flaherty, F-L-A-H-E-R-T-Y. And my office address is 10 High Street, Boston, Massachusetts.

THE ARBITRATOR: I don't know. So far you don't have the Boston accent.

THE WITNESS: It might come out.

THE ARBITRATOR: We'll see. Okay. Mr. Crowe is going to ask you some questions. If Mr. Lewis says the word "objection," don't answer until I tell you whether or not you should do so.

Mr. Crowe, why don't you proceed.

THE WITNESS: Before we proceed, is it okay if I have a copy of my report on my other screen?

THE ARBITRATOR: If you -- let Mr. Crowe -- if he wants to

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DIRECT-EXAMINATION MR. FLAHERTY

Babson College in 1988. I am currently the U.S. managing partner of MDD, Matson Driscoll & Damico. We are a forensic accounting firm that specializes in many things, but including a substantial force being measurement of damages.

I've been practicing in this field for 30 plus years. I've done thousands if not tens of thousands of damage calculations over that time. I have testified at trial on damage calculations, arbitrations, mediations. I have given presentations on damages to law firms, insurance companies, etcetera.

Q. Okay.

MR. CROWE: With that in mind, I just ask the gentleman be qualified as a --

THE ARBITRATOR: No need in an arbitration, Mr. Crowe.

MR. CROWE: Okay.

THE ARBITRATOR: Go ahead.

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 Q. Did there come a time where you
3 were retained by our law firm to review
4 the -- the allegations in this
5 controversy and to offer an opinion
6 with respect to the economic damages?

7 A. Yes.

8 Q. And do you recall, generally,
9 what was the scope of your retention?

10 A. Sure. I was given brief
11 background on the dispute and then
12 asked to provide my opinion on how
13 damages should be measured.

14 Q. And were you provided certain
15 documents in order to assist you in
16 this endeavor?

17 A. Yes.

18 Q. Do you recall what you were
19 furnished?

20 A. Certainly, I may not recall the
21 entire list, but I had the complaints,
22 the legal proceedings, some of the
23 legal proceedings. I had the -- a lot
24 of the contracts, leases. For example,
25 the contract between Forall and Sarah,

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 damages that flowed from the plaintiff
3 or claimant's breach of contract in
4 this circumstance?

5 A. Sure. My opinion is that the
6 damages were \$2,382,834 before --
7 before interest. And that that -- go
8 ahead.

9 Q. I'm sorry. I cut you off. I
10 apologize.

11 A. And including interest
12 \$2,723,716.

13 Q. That's statutory interest under
14 New York law of nine percent?

15 A. Correct.

16 Q. Let's -- let's go through this
17 and break that down if we can.
18 Mr. Brown is my technical assistant
19 here. He's putting this up on the
20 screen for me.

21 What was the first item of
22 damage that you considered in this
23 context?

24 A. Sure. The first items would be
25 what I would call "loss profits".

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 and some of the others. I'm not going
3 to remember the specifics.

4 I was -- I was provided
5 financial documentation, invoices, you
6 know, to the extent I relied upon it, I
7 generally try to note it in my report.
8 And I'm sure I forgot to mention some
9 of the stuff I received and reviewed.

10 Q. And you ultimately prepared a
11 report with respect to your analysis?

12 A. I did.

13 Q. And that's the report you have
14 up on your screen and was ultimately
15 admitted into evidence in this
16 proceeding, I think as Exhibit 37 --
17 38?

18 A. Yes.

19 THE ARBITRATOR: It's 38.

20 Yeah.

21 Q. Okay. And what -- just,
22 generally, can you tell me what was
23 your opinion and then we'll go back and
24 break it down in terms of detail?

25 What was your opinion as to the

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 Q. And how did you go about
3 calculating that?

4 A. Sure. So there was a contract
5 in place between Forall and Sarah for
6 -- it was a ten-year contract that
7 expired in March 2021. It was \$900,000
8 a year contract. And, actually, within
9 the contract, it was broken, actually,
10 into two seasons, and I don't remember
11 the specific details, but roughly 450
12 for the winter, spring season, and 450
13 for the summer, fall season.

14 So my damages are for the period
15 of 2016 through the period of 2021; the
16 end of that contract. And I commenced
17 them in 2016, because in the summer of
18 2016, the store closed and no longer
19 was Forall receiving the inventory
20 purchases that were required under the
21 contract.

22 So if you look at my Schedule 3,
23 it would probably be easier for me to
24 explain it from there.

25 Q. We'll put on right now.

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 A. It's schedule two. I said
3 three, but it's schedule two.

4 MR. BROWN: Kevin, do you
5 have a specific page number?

6 THE WITNESS: I don't have
7 it. Mine says 48 of my PDF. I
8 don't know that's always
9 consistent across platforms. I
10 think if you go to the next one,
11 which is schedule two.

12 Q. Okay. So this shows how you
13 breakdown the sales, loss cost, and
14 margin and so forth. Can you elaborate
15 on that?

16 A. Sure. So this is my calculation
17 of lost profits based on that contract.
18 I start in the year 2016, and there's
19 \$450,000, and that is because the
20 contract between Forall and Sarah had
21 two distinct buying seasons split
22 approximately 450 each.

23 Since the summer -- the store
24 closed in the summer of '16, the last
25 buying season never took place, so I

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 included the first buying period
3 in 2021.

4 Q. And so you come up with last
5 sales to Forall to four and a half
6 million dollars, correct?

7 A. Correct.

8 THE ARBITRATOR: Let me just
9 do that again so that I
10 understand it. Of course, I'm
11 going to ask Mr. Salsbery
12 about it as well, but do you have
13 his report in front of you?

14 THE WITNESS: Mr.
15 Salsbery's?

16 THE ARBITRATOR: Yes.

17 THE WITNESS: I do have it.

18 THE ARBITRATOR: I want you
19 to look at Paragraph 17 of his
20 report.

21 THE WITNESS: Sure.

22 THE ARBITRATOR: And he
23 identifies dates as September of
24 '16, September 1st of '16 to
25 March of '21.

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 used 450 thousand in 2016.

3 THE ARBITRATOR: Hang on.
4 Did you read Mr. Salsbery's
5 report?

6 THE WITNESS: I did.

7 THE ARBITRATOR: So you know
8 that he criticizes this and says
9 it should be only four and a half
10 years.

11 THE WITNESS: Yes.

12 THE ARBITRATOR: Why do you
13 think he's wrong?

14 THE WITNESS: I think he's
15 focused on calender, and what --
16 you have to look at that contract
17 with Sarah and Forall, which has
18 two distinct buying periods where
19 they're required to purchase
20 approximately 450 in buying
21 periods, so the store closing in
22 July or August, the second buying
23 period was -- never happened.

24 So I included that in -- I
25 included that in 2016 and I also

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 THE WITNESS: Yes, I see
3 that.

4 THE ARBITRATOR: Now, I, at
5 first blush, thought he made
6 sense that that would only be
7 four and a half years, not five,
8 because with the closing of the
9 store at the end of August of
10 '16, the first season of '16
11 would have been, you know, paid
12 for or would have been ordered.
13 So I don't understand why '16
14 should be two seasons and, of
15 course, '21, if it ended in
16 March, that would only be one
17 season, so I'm trying to
18 understand your position on this.

19 THE WITNESS: Sure. So if
20 we look at my schedule two, and
21 you look at the year 2016, I have
22 \$450,000 in '16. That's half a
23 year, because it's a buying
24 season. So they missed out on
25 the second half of the buying

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 season. And if you look in the
3 contract, it differentiates two
4 buys in the buying seasons,
5 around 450,000, so in '16 they
6 lost that second half.

7 THE ARBITRATOR: So you're
8 saying that '16 is one season,
9 '21 is one season, and therefore
10 you have the other four years and
11 that way you came up with five
12 years?

13 THE WITNESS: Correct.

14 THE ARBITRATOR: Thank you.
15 Go ahead, Counselor.

16 Q. So the -- the difference in --
17 except what Mr. Salsbery's saying it
18 lost sales then are four million, fifty
19 thousand, right, because he's doing it
20 on a monthly basis, correct?

21 A. That's correct.

22 Q. Okay. So now, after you --
23 after you -- and let me just note, in
24 your report earlier you did allot to
25 that possibility where -- I'll take you

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 not earning the sales.

3 So what I deducted -- so what
4 I've deducted here is the cost of the
5 product, the cost of the inventory that
6 Forall would have incurred had they
7 shipped the \$900,000 a year of
8 inventory to Sarah.

9 Q. And then you applied that cost
10 on a yearly basis, correct?

11 A. Right.

12 Q. So how did you -- let's drill
13 down. How did you determine what the
14 cost that Forall, essentially, ordered
15 by not making these sales and then
16 applied to the sales?

17 A. Sure. I think the easiest thing
18 is if we can refer to Schedule 3 now.

19 Q. Okay.

20 A. I can show you how I determined
21 the cost.

22 Q. Okay.

23 A. So we did -- we did a test of
24 sales between Forall and Sarah, and the
25 first column here is the selling price

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 to Page 4 of the body of your report.
3 You did note the possibility in
4 calculating that on a \$4,050,000 --

5 A. Yes.

6 Q. -- value, right?

7 A. I did the report. I read that
8 report before and, you know, in
9 preparing for this, and I think the
10 report is missing the next sentences or
11 two.

12 The report could have been
13 better explaining the difference
14 between that narrative and schedule
15 two.

16 Q. We understand. And it's
17 nothing. We all strive to be better.
18 Now, back to schedule two, the chart
19 says, "Less cost." How did you
20 calculate the cost factor for the --

21 A. Yes. So the -- the proper way
22 to measure damages in any economic loss
23 situation is the loss sales minus the
24 saved cost. So the cost that the
25 company will not incur since they're

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 to Sarah. So that is verified to an
3 invoice that's exactly what Forall is
4 invoicing Sarah.

5 Q. Let me stop you right there.
6 You've done about -- you've looked at
7 eight or so products. Now, obviously,
8 these are then representative. You
9 didn't go through every single product
10 and every single invoice and calculate
11 these. You had to go about it in this
12 fashion?

13 A. That's correct. We did a test,
14 which was common for us to do a test.
15 So we did a test of these eight
16 products.

17 Q. Okay. And that -- and how did
18 you go about figuring out what's
19 described as the margin calculation
20 there at the top?

21 A. Right. So you start with the
22 selling price and then the next item,
23 the second column, you see the Forall
24 cost, and that is Forall's direct cost
25 of --

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 Q. Is that manufacturing cost, the
3 wool, the yarn or whatever they make --

4 A. It would be the manufacturing
5 cost or to the extent that it's a
6 purchased product, a purchase material,
7 that would be in there too, but it's
8 their cost -- their direct cost for the
9 product.

10 Q. Okay. And then the next column
11 over is "additional cost"?

12 A. Right. So, obviously, the
13 product comes from Italy. So, you
14 know, duty and freight could be a
15 substantial cost in that situation.

16 So we -- we obtained four or
17 five specific invoices, and the duty
18 and freight that goes with those four
19 or five invoices, and determined an
20 average duty and freight cost as a
21 percentage, and that's what that is.

22 Q. And then from there you
23 calculate what the total product cost
24 is?

25 A. Right. So the next column says

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 "Total Forall product cost." That is
3 the total of those two Forall cost and
4 the duty and freight, and then subtract
5 that from the selling price and it gets
6 you to your margin or your profit.

7 Q. And "margin" essentially means
8 how much money they're going to make on
9 each one of these invoices; is that
10 correct?

11 A. It's the incremental profit that
12 they would have made on these \$900,000
13 of sales, yes, from these products.

14 Q. Now, this might be time to
15 address this because Mr. Farber had
16 asked you about Mr. Salsbery's report.

17 One of the criticisms he made is
18 that this was not a valid calculation
19 because you did not allow for certain
20 variable cost, and can you respond to
21 that?

22 A. Sure. First of all,
23 Mr. Salsbery's report, I think he has a
24 sentence in there that specifically
25 says based on his review of the

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 industry, the approximate 50 percent
3 that I use is a representative direct
4 cost or margin.

5 Q. He agreed with you. But for
6 this criticism of the variable cost --

7 A. I know his argument is that
8 there are additional costs that must be
9 deducted from this. And he points to
10 -- and he points to these public
11 companies in his report and he pulls --
12 can I bring up his report?

13 THE ARBITRATOR: Sure.

14 MR. CROWE: That's 38 in our
15 exhibit list and my colleague,
16 Mr. Brown, is going to make that
17 available to everybody.

18 THE ARBITRATOR: And I think
19 you're roughly looking at
20 paragraph 25 in his report.

21 THE WITNESS: But being a
22 number guys, I'm going to look at
23 Schedule 2.1, which is the
24 numbers and not the narrative
25 portion. On my PDF it's 28.

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 THE ARBITRATOR: What page?

3 THE WITNESS: 28. And it's
4 Schedule 2.1 in the upper
5 right-hand corner.

6 Q. Is that the right page?

7 A. Yes.

8 Q. Okay.

9 A. So the first column there, gross
10 profit margin, and these are obviously
11 for what he pulled as representative
12 companies. That's the gross profit
13 margin and that's consistent with the
14 approximate 50 percent that I used in
15 my report based on my actual test of
16 Forall's activity with Sarah.

17 And that's -- that's where --
18 Mr. Salsbery indicates that that's
19 reasonable. In any case, the next step
20 -- it says that -- if you look at the
21 middle column, divot margin. He said
22 there are costs that are further
23 reduced, get down to the EBIT margin
24 that must be considered.

25 Q. But is that earnings before

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 interests and facts?

3 A. That's what that stands for.
4 Earnings before interest and tax. So
5 what this is deducting is what, in the
6 industry, we would refer to as G and A;
7 General and administrative expense.

8 These are non-product costs.
9 These are your -- your marketing
10 department, these are your accounting
11 department, your lease, your
12 depreciation; they're all the
13 non-direct product cost related to the
14 company.

15 And if you go -- if you Google
16 VS Corporation and get their financial
17 statement up online, they're a public
18 company, you'll see they go to sales,
19 they deduct costs of goods sold to get
20 this gross profit margin. Costs of
21 good sold is the product cost, and then
22 their next deduction is called G and A
23 on their financial statement, general
24 and administrative. And that gets you
25 down to EBIT margin.

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 closed.

3 So maybe some portion of
4 the G and A ought to deduct the
5 same way freight was deducted.

6 THE WITNESS: So the -- I
7 agree with the concept, right, to
8 the extent there's a saved cost,
9 it should be deducted. I'll tell
10 you based on my experience, and,
11 again, you can Google VS
12 Corporation to get it.
13 99 percent of these costs are
14 going to be your fixed cost, and
15 have nothing to do with the Las
16 Vegas store.

17 They're your president
18 salary, your CFO salary, you
19 know, your rent for all your
20 facilities. I mean, would a trip
21 be saved, maybe, but it is a
22 minuscule percentage.

23 Q. Right. So the outlays by Forall
24 on a wholesale level are much different
25 than what we are dealing with at the

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 So I don't understand Mr.
3 Salsbery's position that other costs
4 must be deducted after margin. The
5 only thing below margin are general and
6 administrative costs.

7 Q. And those --

8 A. I'm sorry. So in this scenario,
9 in this economic damages model, those
10 are fixed costs to Forall. They didn't
11 get any savings in those cost as a
12 result of losing this contract.

13 THE ARBITRATOR: Isn't that
14 -- isn't that really the nub of
15 your disagreement here, that some
16 of them are not fixed.

17 I mean, we had a witness
18 testify yesterday who said that a
19 couple of times a year he would
20 go to Las Vegas. I mean, if the
21 store is closed, the expense of
22 him going to Las Vegas does not
23 exist. And you know, presumably,
24 you know, there's other expenses
25 that is saved if the store is

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 store level, right, that Sarah is
3 incurring cost, but that has nothing to
4 do with Forall's profit calculation; is
5 that correct?

6 A. Yes. This damage model isn't
7 related to the profit of the store.
8 Forall doesn't, you know, own the store
9 at this point. It's the profit they
10 would have had on sending \$900,000 of
11 inventory to Sarah.

12 Q. And that's what you're
13 calculating, correct?

14 A. Correct.

15 Q. That gets us back to schedule
16 two. So there is another item they did
17 say fair enough, if calculated, the
18 reduction in the cost for advertising,
19 right [sic]?

20 A. Yeah. The contract requires
21 Forall to match -- it's only a match --
22 but to the extent that Sarah spent
23 \$27,000 on advertising, Forall would
24 have had to spend them. So I made an
25 assumption that they would have spent

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 it and took it as a saving.

3 Q. So you took the lost sales in
4 the first column, applied the margin,
5 which you flesh out on the next
6 schedule, and we'll see how you do that
7 to come to a cost ratio of 48.9 percent
8 and then you come up with your loss
9 margin, right, and that's almost two
10 million three?

11 A. That's correct.

12 Q. And then you paid the
13 advertising, and you come up with --
14 you calculated as first component of
15 what we are talking about the loss
16 profits as a result of the doctor's
17 breach, right?

18 A. Correct.

19 Q. Okay. And -- let's go to the
20 next item you've calculated in terms of
21 your damages, and that's what was
22 described as certain out-of-pocket cost
23 that the company, Forall, incurred as a
24 result of the sudden termination.

25 Are you familiar that the lease

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 factually there was any sort of
3 out-of-pocket expense that you
4 know that Forall paid to -- to
5 get, you know, being prepared
6 maybe for the extra month.

7 MR. CROWE: I'm sorry,
8 Mr. Farber, can I clarify? Are
9 you referring to his 2016?

10 THE ARBITRATOR: Absolutely.
11 I'm talking about '16. Thanks,
12 Mr. Crowe.

13 MR. CROWE: Okay.

14 THE ARBITRATOR: Do you have
15 any information in that regard or
16 not?

17 THE WITNESS: I'm not sure I
18 understand the question. Could
19 you try again? Are you talking
20 about stranded inventory in Italy
21 that was never delivered to the
22 store?

23 THE ARBITRATOR: Yes.
24 Inventory that was produced or
25 maybe was on its way. I have no

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 came to a sudden screeching halt as a
3 result of certain --

4 A. That's my understanding. It's
5 an abrupt end to the operation, yes.

6 Q. And did you list these items,
7 the out-of-pocket cost on a schedule?

8 THE ARBITRATOR: Hang on,
9 Mr. Crowe. Before you get to the
10 out-of-pocket items. Let me just
11 ask Mr. Flaherty --

12 Do you have any
13 knowledge if there was product
14 that was manufactured and paid
15 for that was to be used in Las
16 Vegas and, you know, that was
17 intended to be used in Las Vegas
18 or shipped to Las Vegas or it was
19 not because of the closing of the
20 store?

21 In other words, is one
22 category of damage to consider,
23 you know, the way you're
24 calculating it on these numbers,
25 and I just want to know if

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 idea.

3 THE WITNESS: The inventory
4 I'm aware of is inventory that
5 was already in the United States
6 in the store, and the costs
7 associated with liquidating
8 those.

9 I'm not aware of -- we
10 haven't included -- I'm not aware
11 of any costs related to stranding
12 of any inventory in Italy or
13 disruption to operations in Italy
14 due to the abrupt end.

15 THE ARBITRATOR: That's
16 exactly what I was asking about.

17 Go ahead, Mr. Crowe.

18 Q. So getting back to the
19 Category 2, if you go ahead in your
20 report, out-of-pocket cost, you address
21 that in -- in the schedule there as
22 part of your report?

23 A. In Schedule 4, yes.

24 Q. And in that you -- you tally the
25 cost that are incurred by Forall as a

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 result of this controversy?

3 A. Correct.

4 Q. And where did you get that
5 information?

6 A. This information came from -- I
7 believe it was -- Michelle Gioffre sent
8 me this information. It came from the
9 accounting department. I believe it
10 came from Ms. Gioffre.

11 Q. Okay. What did they tally in
12 terms of cost? I see you break it down
13 by year.

14 First of all, let's look at
15 2016. What was the cost then?

16 A. I think, yeah, on Schedule 4.
17 Why don't I explain this document
18 briefly.

19 Q. Yes, please.

20 A. So I asked -- I believe it was
21 Ms. Gioffre or Forall about costs
22 incurred related to this. She provided
23 to me a -- a document that captured
24 those costs.

25 But what was important to me is

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 A. Yes.

3 Q. And what is the grand total on
4 the out-of-pocket costs?

5 A. \$128,353. And that was,
6 obviously, the date of the -- the date
7 of the report.

8 Q. Going back to 2016 charges, what
9 did they relate to, if you can just --

10 A. I mean, their descriptions are
11 there. You can see them. "Cost
12 incurred from -- for legal claims of
13 Nevada is 25,838." Charges to get to
14 Nevada to, I presume, deal with the
15 abrupt closing of the store and some
16 severance package relating to the
17 store.

18 Q. All right. The last item you
19 have is something described as,
20 "Inventory on hand." Can you explain
21 what you did in that calculation?

22 A. Yeah. Again, the question was,
23 you know, what did you do with the
24 inventory? It's my understanding,
25 based on speaking to the Forall

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 that it had an accounting background to
3 it. Right. This was not just a
4 slapped-together excel spreadsheet. If
5 you look at the column source -- I mean
6 the first columns speak for themselves;
7 description, comments, date. The next
8 column is "source," and these are --
9 these are from the accounting entries
10 made by the accounting firm.

11 So you'll see Nevada closing
12 trial balance. So the source of that
13 is it came from their actual underlying
14 accounting document, their trial
15 balance. You'll see the 2018 charges
16 maybe seven or eight down is \$2,500.
17 And "JE" is a journal entry, meaning
18 they entered it into their accounting
19 system.

20 So I had -- what I would say is
21 accounting document to -- that I've
22 summarized here.

23 Q. Okay. And that's -- that
24 follows all the way through on each
25 year?

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1 DIRECT-EXAMINATION MR. FLAHERTY
2 representatives, the inventory was
3 abruptly pulled out of the Las Vegas
4 store, so it couldn't be -- couldn't be
5 liquidated in your customary fashion.

6 I believe it was moved to a
7 warehouse in New Jersey. And after
8 that I'm not sure if it went back to
9 Italy, to the liquidators, I'm not
10 really sure, but I know the inventory
11 value based on the reports I was
12 provided was around -- let me just get
13 this in front of me -- was around
14 \$700,070, and Forall estimated that
15 they lost 10 percent in liquidating
16 that inventory.

17 So that would men cost related
18 to moving it, cost related to selling
19 it, you know, if they didn't get their
20 cost on the inventory back, they
21 estimated 10 percent. That's the
22 77,381 that I have put into my report.

23 Q. So you totaled your damages in
24 -- what is that? Schedule --
25 schedule --

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1 DIRECT-EXAMINATION MR. FLAHERTY

2 A. One.

3 Q. One. Okay. And you have a
4 total there for all three of these
5 components and what was the number
6 including the statutory nine?

7 A. \$2,723,716.

8 Q. Okay. Thank you.

9 MR. CROWE: That's all I
10 have.

11 THE ARBITRATOR: Okay.
12 Mr. Lewis, it's about 10 to. Do
13 you want to break for lunch now
14 or do you want to take a few
15 minutes and start?

16 MR. LEWIS: I think we can
17 break.

18 THE ARBITRATOR: Okay.
19 Everyone, I think we are doing
20 okay on time, so 2:00. All
21 right. We'll see you all at
22 2:00. Thank you all.

23 (Whereupon, a lunch break
24 was taken.)

25 THE ARBITRATOR: Okay.

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1 CROSS-EXAMINATION MR. FLAHERTY
2 of you please speak up louder.

3 A. There is mitigation. There were
4 years that after Sarah couldn't
5 continue then Forall operated it and
6 that was mitigation. I don't -- I
7 think other companies, Italrod [sic],
8 they operated it, so that's mitigation.
9 So certainly there was mitigation
10 considered, because I'm only picking up
11 after those efforts.

12 Q. Mr. Flaherty, the store closed
13 in August of 2016 under the Forall's
14 operation, correct?

15 A. It closed while Forall was
16 managing the store, yes.

17 Q. Exactly. You start your
18 calculation from September 1st going
19 forward, right?

20 A. Correct.

21 Q. And so your report doesn't
22 account for any litigation that would
23 have taken place after that time,
24 right?

25 A. After that time, correct.

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1 CROSS-EXAMINATION MR. FLAHERTY

2 Mr. Lewis, why don't you proceed
3 with your cross? We've got an
4 expert witness, so you can handle
5 it as you see fit.

6 Mr. Flaherty, just try
7 to respond to his questions
8 unless, of course, there's an
9 objection by Mr. Crowe.

10 CROSS-EXAMINATION
11 BY MR. LEWIS:

12 Q. Good afternoon, Mr. Flaherty.

13 A. Good afternoon.

14 Q. I appreciate your time today.

15 In your report you make no accounting
16 for Forall's legal obligation to
17 mitigate the damages, right?

18 A. I'm not interpreting any legal
19 obligations.

20 Q. You make no accounting for any
21 mitigation, correct?

22 A. I don't think that's true.

23 Q. Why do you disagree with that
24 statement?

25 THE ARBITRATOR: Guys, both

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1 CROSS-EXAMINATION MR. FLAHERTY

2 Q. And you're aware that Forall
3 couldn't pursue another operator at
4 some point after August 2016?

5 A. No.

6 MR. CROWE: Objection.

7 THE ARBITRATOR: Mr.
8 Flaherty, as you well know, you
9 have to give Mr. Crowe a chance.
10 I heard the answer. Let's move
11 on.

12 Q. Mr. Flaherty, I'm trying to make
13 sure I understand. You're saying that
14 Forall could not have pursued another
15 operator after August of 2016; is that
16 your testimony?

17 MR. CROWE: Objection. When
18 you say "could have pursued
19 another operator," I don't know
20 what you're referring to.
21 Another operator in that store,
22 in the mall, Las Vegas, or
23 Nevada?

24 THE ARBITRATOR: Overruled.
25 You can answer.

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1 CROSS-EXAMINATION MR. FLAHERTY

2 A. The answer is no.

3 Q. The answer is no to what -- let
4 me try to be more clear.

5 Could Forall have pursued
6 another operator after August of 2016,
7 Mr. Flaherty?

8 A. I don't know.

9 Q. But you don't take into your
10 report any obligation to do so?

11 MR. CROWE: Objection. The
12 report speaks for itself.

13 THE ARBITRATOR: Overruled.
14 He can answer.

15 A. To the extent there was an
16 obligation that's a legal question that
17 I'm not opining on, and the report, as
18 I discussed before, does have
19 mitigation in it prior to 2016.

20 Q. Mr. Flaherty, my question is a
21 little different. Your report doesn't
22 reflect any effort or obligation to
23 pursue another operator after August of
24 2016; do you agree with that?

25 A. I don't know how to answer that.

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1 CROSS-EXAMINATION MR. FLAHERTY

2 contract extended to 2030? Do you
3 think it would be reasonable to just do
4 900,000 times 15 and start your damages
5 calculation that way?

6 A. I don't know. I'd have to see
7 what the facts and circumstances were
8 up to 2030.

9 Q. Would you agree that at some
10 point in time it becomes unreasonable
11 to just continue to do the math
12 \$900,000 times a number?

13 MR. CROWE: Objection. He's
14 asking whether it's unreasonable.
15 Isn't that ultimately a question
16 of law?

17 THE ARBITRATOR: This
18 witness is not here to opine on
19 the reasonability of contract
20 provisions, which is what you're
21 asking him to do. So, I mean,
22 sustained. Next question.

23 MR. LEWIS: Mr. Farber, if I
24 may be heard because I didn't
25 have an opportunity to Mr. Crowe

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1 CROSS-EXAMINATION MR. FLAHERTY

2 I don't know how to comment. The
3 question is poorly worded. The report
4 had numbers in it and you're asking
5 about effort.

6 Q. Let me try it again. Does your
7 report account for Forall persuing and
8 securing a different operator after
9 August of 2016; is that in your report
10 anywhere?

11 A. No.

12 Q. Okay. Thank you. So you extend
13 the contract out at the full minimum
14 purchase requirement, the \$900,000
15 through the term of the contract,
16 correct?

17 A. Yes.

18 Q. I understand that you make
19 certain reductions, but that's the
20 basis of the -- of the damages
21 calculation starts with the \$900,000
22 through the term of the contract,
23 right?

24 A. Agreed.

25 Q. Now, Mr. Flaherty, what if the

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1 CROSS-EXAMINATION MR. FLAHERTY

2 --

3 THE ARBITRATOR: Fair
4 enough. Go ahead.

5 MR. LEWIS: My question is
6 more about the damages
7 calculation, and at some point in
8 time whether mitigation needs to
9 be included in the damages
10 calculation and he's the damages
11 expert.

12 THE ARBITRATOR: That's no
13 what he asked him.

14 MR. LEWIS: Mr. Crowe -- I'm
15 sorry.

16 THE ARBITRATOR: What you
17 asked him was: Is it reasonable
18 if the contract went for another
19 15 years, and it had this
20 provision in it, for him to do
21 that calculation. I mean, who
22 knows. You know, maybe those
23 parts would have said, "We don't
24 care if it goes for 80 years."
25 He's not a lawyer. It's a

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1 CROSS-EXAMINATION MR. FLAHERTY
2 contract provision.

3 I don't see that -- it's
4 really not going help me in terms
5 of what I have to decide whether
6 it would be reasonable for a
7 period of time after the
8 expiration of this contract.

9 We've got enough
10 problems just dealing with the
11 period of the contract, so I
12 sustained the objection and let's
13 move on.

14 Q. Mr. Flaherty, you will agree
15 with me that at some point in time you
16 would have to take into account
17 mitigation into your damages
18 calculation?

19 MR. CROWE: Objection.

20 THE ARBITRATOR: Sustained
21 [sic]. He can answer.

22 MR. LEWIS: You mean
23 "overruled"?

24 THE ARBITRATOR: I'm sorry.
25 I meant overruled. That he can

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1 CROSS-EXAMINATION MR. FLAHERTY

2 MR. LEWIS: Sure. Mr.
3 Flaherty just said that no one
4 who was operating was able to
5 fulfill the obligation under the
6 contract. My question was: That
7 includes while Forall was
8 operating the store assuming, Mr.
9 Flaherty, is talking about
10 purchases of up to \$900,000 per
11 year.

12 MR. CROWE: Objection.
13 That's not what the witness said.

14 THE ARBITRATOR: I agree
15 with Mr. Crowe. I didn't quite
16 hear that. So why don't you
17 restate it in a form of a full
18 question, Mr. Lewis.

19 I don't think I
20 necessarily agree with you that
21 that's what he testified to. Go
22 ahead.

23 MR. LEWIS: Fair enough,
24 Mr. Farber.

25 Q. So, Mr. Flaherty, you just said

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1 CROSS-EXAMINATION MR. FLAHERTY
2 answer.

3 A. In a damages calculation, to the
4 extent mitigation is feasible, it
5 should be considered in a general
6 damages calculation.

7 Q. Okay. So by that portion of
8 your testimony, are you testifying that
9 you excluded that because you don't
10 believe that mitigation was feasible?

11 A. I don't believe any mitigation
12 was possible or took place. The
13 contract was never fulfilled by
14 anybody. The whole \$900,000 was lost
15 for the remainder of the contract.

16 Q. Including while Forall was
17 operating the store; isn't that true,
18 Mr. Flaherty?

19 MR. CROWE: Objection.

20 THE ARBITRATOR: "Even while
21 Forall was operating the store,"
22 I don't -- sustained. I don't
23 understand the question.

24 It was -- say it again,
25 Mr. Lewis.

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1 CROSS-EXAMINATION MR. FLAHERTY

2 if mitigation is feasible, it should be
3 included in the damages calculation;
4 did I hear that correctly?

5 A. I think that's correct
6 paraphrasing, yes.

7 Q. I didn't mean to paraphrase.

8 A. Then we can read back the record
9 if we're not going to paraphrase.

10 THE ARBITRATOR: Let's just
11 -- Mr. Flaherty, you're an old
12 handed testifier, so let's not
13 get into that, all right?

14 Here's the question,
15 look, as Mr. Lewis has pointed
16 out, you didn't take into account
17 anything on mitigation, we know
18 that, the question is: Why not?
19 Tell me why not.

20 THE WITNESS: Sure. In my
21 opinion, there was no mitigation.
22 Nobody picked up this contract
23 after August of 2016. And so
24 there was definitely no
25 mitigation. As far as the legal

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1 CROSS-EXAMINATION MR. FLAHERTY
2 obligation to mitigate, that's
3 not my decision.

4 Whether there was even
5 an opportunity to mitigate, I
6 don't know if that's even
7 possible. By the time the store
8 had operated, had gone out of
9 business, had closed abruptly,
10 and kind of ruined its
11 reputation, I think to assume
12 that Forall could find somehow to
13 mitigate, it's a reach if you're
14 going to do it on a theoretical.

15 THE ARBITRATOR: Okay.

16 Go ahead, Mr. Lewis.

17 Q. So you excluded it because you
18 didn't believe mitigation was feasible
19 based on what you understood; is that
20 fair?

21 A. No. I just testified as to why
22 I excluded it.

23 THE ARBITRATOR: It actually
24 is pretty much what Mr. Lewis
25 said. You didn't think that it

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1 CROSS-EXAMINATION MR. FLAHERTY
2 know he didn't mitigate. I know
3 the position of Mr. Salsbery is
4 that he should have mitigated.
5 He's given his reasons.

6 I'll hear from Salsbery.
7 We can dance around the words and
8 waste another 20 minutes.
9 Mr. Lewis, I get your point. I
10 understand it. It's up to you.
11 You want to pursue it -- I think
12 you should move on to the next
13 question.

14 MR. LEWIS: Fair enough,
15 Mr. Farber.

16 THE ARBITRATOR: Okay.
17 Let's go.

18 Q. Mr. Flaherty, you talked
19 about -- you testified to what you
20 reviewed in preparation for preparing
21 your report; do you recall that?

22 A. I don't recall that. I don't
23 remember anybody asking me that.

24 Q. Well, they certainly did. You
25 said you reviewed a complaint, you

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1 CROSS-EXAMINATION MR. FLAHERTY
2 would happen, right?

3 THE WITNESS: And more
4 importantly, it didn't happen.
5 There was no mitigation.

6 Q. I appreciate you pointing that
7 out. Let me ask you a question so we
8 can move on from this. What you're
9 saying is it's not in your report
10 because Forall didn't mitigate, so
11 there's nothing to account for because
12 there was no mitigation, you testified
13 as such, correct?

14 MR. CROWE: Objection. I
15 think the witness said this is
16 primarily a legal issue. And
17 then factually, it does not
18 appear to be something that
19 occurred or may have been
20 feasible based on his knowledge.
21 I don't think it's any more
22 complicated than that.

23 THE ARBITRATOR: Guys, this
24 isn't doing me any good. All
25 right. The bottom line here is I

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1 CROSS-EXAMINATION MR. FLAHERTY
2 reviewed legal proceedings, the
3 contracts, leases, invoices, etcetera;
4 do you recall that?

5 A. I think that question was what I
6 reviewed to prepare my report at the
7 time.

8 Q. That was my question, sir. I
9 don't know if you didn't hear me. I
10 said what did you review to prepare
11 your report?

12 A. Yes. So --

13 Q. You testified that that was the
14 complaint, legal proceeding, contracts,
15 leases, invoices; do you recall that?

16 A. Yeah. And some spreadsheets and
17 some other things that I said may be
18 referenced in my report that I didn't
19 list.

20 Q. Well, they wouldn't be
21 referenced in your report because you
22 said you may have forgotten to list
23 some additional items in your report;
24 that was your testimony.

25 A. No. I think what I said was --

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1 CROSS-EXAMINATION MR. FLAHERTY
2 when I was verbally responding to the
3 question, I may have forgotten to list
4 something. However, there may be
5 things referenced in my report that I
6 did look at.

7 Q. Is everything that you relied
8 responsibly referenced in your report?

9 A. I don't know.

10 Q. Shouldn't it be, Mr. Flaherty?

11 A. I don't -- to the extent that it
12 was important to my opinions, it's in
13 there. If you question me --

14 Q. I'm asking you based on your
15 many years of experience that you
16 testified about with Mr. Crowe under
17 his examination, shouldn't everything
18 that you relied upon be referenced in
19 your report, sir?

20 A. I'd say yes, generally, but
21 sometimes things don't get referenced,
22 but yes, generally they should be.

23 Q. Sometimes things don't get
24 referenced. It goes to the credibility
25 and the reliability of the report,

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1 CROSS-EXAMINATION MR. FLAHERTY
2 can possibly on cross respond
3 "yes," "no," "I don't remember,"
4 "I don't know," and that's fine,
5 and we'll leave it at.

6 THE WITNESS: I'm happy to
7 do that, but the problem is when
8 you say "should be," things like
9 that, that make me have to -- I
10 can't respond yes or no.

11 THE ARBITRATOR: To the
12 extent you can, try to respond
13 that way.

14 THE WITNESS: Absolutely.

15 THE ARBITRATOR: Go ahead,
16 Mr. Lewis.

17 MR. LEWIS: Thank you.

18 Q. I'm going to put your report
19 back on the screen, Mr. Flaherty. Are
20 you able to see my screen?

21 A. I am.

22 MR. CROWE: Is there a
23 question pending?

24 MR. LEWIS: There's not.

25 THE ARBITRATOR: Not yet.

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1 CROSS-EXAMINATION MR. FLAHERTY
2 correct, sir?

3 A. Not necessarily.

4 Q. I'm going to take the answer to
5 the question was it should be in there,
6 correct, everything you relied upon
7 should be referenced in your report,
8 correct?

9 A. That is what I attempt to do,
10 yes.

11 MR. LEWIS: Mr. Farber, you
12 have been really, really good in
13 instructing witnesses to do "yes"
14 or "no" when they can without --
15 I'll ask if that continues, if
16 perhaps Mr. Farber will help me
17 in that regard.

18 THE ARBITRATOR: Well,
19 usually I'm pretty tough on party
20 witnesses. Third-party witness
21 and experts, I don't -- I don't
22 usually impose what I -- what you
23 saw me do.

24 But, Mr. Flaherty, as
25 you know, it goes faster if you

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1 CROSS-EXAMINATION MR. FLAHERTY
2 He's just posting something on
3 the board.

4 MR. LEWIS: Mr. Crowe, you
5 will hear me if I have a
6 question.

7 MR. CROWE: That I will.

8 MR. BROWN: We were having a
9 side bar with counsel. We were
10 afraid we might have missed
11 something. I've had plenty of
12 delays longer than you've taken.

13 MR. LEWIS: I'm just trying
14 to find a sentence in this
15 report. Thank you, though. I
16 appreciate your indulgence.

17 Q. Mr. Flaherty, are you able to
18 see this? I believe this is Schedule
19 3. Is my screen showing okay?

20 A. Yes.

21 THE ARBITRATOR: Mr. Lewis,
22 I see Schedule 3.

23 MR. CROWE: I see it as
24 well.

25 MR. LEWIS: Okay.

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CROSS-EXAMINATION MR. FLAHERTY

Q. Mr. Flaherty, I just want to ask you this "Sample Loss Margin Versus Sarah"; do you see that?

A. Yes.

Q. You list that as a source for information that you're referencing here; is that correct?

A. Yes.

Q. What is that document, sir?

A. It's an excel spreadsheet that was provided to me that is the basis for Schedule 3.

Q. Provided to you by whom?

A. I don't remember exactly who I received it from. I believe it probably came through Ms. Gioffre, but I'm not positively sure.

Q. You were listening to Ms. Gioffre when I asked her if she provided you this document, you had joined by then?

A. Yes.

Q. And she testified she did not, correct?

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CROSS-EXAMINATION MR. FLAHERTY

Q. Do you have a footnote by the Forall cost column which is indicating that that's the only data that's supported by this document?

MR. CROWE: Did you say "is there a footnote?"

Q. Mr. Flaherty, is there something that's on Schedule 3 where you indicate that the only data that's supported by the sample loss margin is Forall costs? Is there such an indication in your report?

A. I don't understand the question. The source is the sample loss margin for this report. The selling price to Sarah, the Forall cost, the Forall duty and freight, is on that spreadsheet.

Q. Well, Mr. Flaherty, you just testified that the only column that was supported by the Sample Loss Margin Versus Sarah was Forall cost?

A. The selling price to Sarah column has invoices. The duty and freight -- Forall duty and freight has

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CROSS-EXAMINATION MR. FLAHERTY

A. My recollection is she said she wasn't sure. She'd have to go back and check to see everything she sent me, and I'm not sure that she sent it to me either. I'm not exactly sure through which channel I got this.

Q. I beg to differ with you. Ms. Gioffre said she was not even aware of this document, sir.

MR. CROWE: Objection.

Q. So I'll ask you again. Who provided this document to you, Mr. Flaherty?

A. I am not sure. I can go back and check my records. I'm not sure exactly what distribution channel it came to me through. I was dealing with Ms. Gioffre on most things, so I assume it was her, but I could be wrong.

Q. And you said this is what you support your calculation in Schedule 3 on, this document, right?

A. It is the support for the Forall cost column.

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CROSS-EXAMINATION MR. FLAHERTY

invoices.

Q. But all of these columns are included on this Sample Loss Margin Versus Sarah?

A. I believe so.

Q. Where is that document, sir?

A. It would be on my server.

Q. Why isn't it in your report, sir?

A. I -- I don't know. I summarized it here.

Q. There's no way to test this without having that document, then I say there's probably no way to test what's on that document without having its support, but why wouldn't you at least include the document that you referenced as the source for this calculation in your report?

MR. CROWE: Objection.

A. I don't --

THE ARBITRATOR: Hang on. There's an objection.

What is the objection,

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1 CROSS-EXAMINATION MR. FLAHERTY
2 Mr. Crowe.

3 MR. CROWE: Counsel's
4 statement in terms of what can be
5 tested -- it sounds like he's
6 testifying as opposed to asking
7 questions. He's incorporating
8 facts which haven't been
9 established.

10 THE ARBITRATOR: That was a
11 bit of a creative one, Mr. Crowe.

12 Overruled. He can answer.

13 A. My answer, to the best I
14 remember the question, is that I don't
15 always attach every underlining source
16 document to my expert report. I
17 properly footnote where it came from.
18 I guess to the extent that counsel
19 wanted it, they could have requested it
20 and it would have been --

21 THE ARBITRATOR: You've
22 answered. You don't have to tell
23 us what counsel can do. All
24 right. You've answered the
25 question.

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1 CROSS-EXAMINATION MR. FLAHERTY
2 it. Let's move on.

3 Q. Mr. Flaherty, what did you do to
4 test the loss costs that you list in
5 lost -- the less cost column in this
6 schedule?

7 A. I -- so first I -- I discussed
8 with Forall the -- the cost that should
9 be provided, the type of costs, and how
10 to provide me that information. Then I
11 tested it to purchase invoices from
12 Forall to Sarah that would show me the
13 selling price that Forall -- that may
14 not answer your question. You may just
15 have been asking about cost, so I
16 apologize on that.

17 And so as far as the cost --
18 your question was just on the cost.
19 I'm sorry, Mr. Lewis.

20 Q. I was going to ask you a
21 follow-up, but my question was on the
22 costs.

23 A. So on the costs, I interviewed
24 with Forall, told them the type of cost
25 that should be provided, how -- how and

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1 CROSS-EXAMINATION MR. FLAHERTY
2 Go ahead.

3 Q. Mr. Flaherty, you stated you
4 don't always attach the supporting
5 information. You attached pages and
6 pages of invoices; do you not?

7 A. There are pages of invoices
8 there, yes.

9 Q. Yet you failed to attach the
10 document that you attribute to being
11 the source for this very important
12 schedule that you have here, and you
13 failed to attach this document to your
14 report, the Sample Loss Margin Versus
15 Sarah, correct?

16 A. No. I disagree. I didn't fail.
17 There's many source documents that are
18 in this report that are referenced but
19 are not attached to the report, many of
20 them.

21 THE ARBITRATOR: Flaherty,
22 we don't have to argue about
23 everything. The fact of the
24 matter is, you did not include
25 it, and I know that, and that's

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1 CROSS-EXAMINATION MR. FLAHERTY
2 what should be included in those costs,
3 and they provided that to me.

4 Q. When you say, "They provided
5 that," they provided that to you
6 verbally, or what do you mean by, "They
7 provided that"?

8 A. On the source reference Sample
9 Loss Margin Versus Sarah, that's where
10 it was provided.

11 Q. Again, I'm going to ask you by
12 whom? Does that refresh your
13 recollection as to who provided that to
14 you?

15 A. I'm sorry. It doesn't.

16 Q. You said you interviewed Forall.
17 You said what you needed to support
18 this less cost column, what you needed,
19 and they provided that, and that
20 doesn't refresh your recollection as to
21 who provided it?

22 A. No.

23 Q. Who all did you interview?

24 MR. CROWE: Objection.

25 THE ARBITRATOR: What's the

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1 CROSS-EXAMINATION MR. FLAHERTY
2 objection?

3 MR. CROWE: "Who all," can
4 you ask him who he interviewed?

5 THE ARBITRATOR: I think he
6 did. Overruled. You can answer.

7 Who did you interview?

8 THE WITNESS: I don't
9 remember who was on the call. I
10 was dealing with their accounting
11 group, Michelle and her
12 colleague, and I -- I can't

13 remember if I was going through
14 them on everything or if I had
15 people from Forall on the phone
16 as well. I don't remember.

17 Q. Approximately how many times did
18 you speak with Forall or its accounting
19 group in preparation for preparing your
20 report?

21 A. So I consider Michelle's group,
22 Gioffre's group, to be their accounting
23 group. I don't know. By e-mail, by
24 telephone, I'll ballpark it, either 10
25 times, 6 to 10 times.

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1 CROSS-EXAMINATION MR. FLAHERTY
2 what do you mean, can he share
3 with you?

4 MR. LEWIS: Well, he shared
5 with us invoices, etcetera. I'm
6 asking Mr. Flaherty if he can
7 share with us what this document
8 is that he supports Schedule 3
9 with.

10 MR. CROWE: I'm going to
11 note an objection. The gentleman
12 prepared his report as he deemed
13 appropriate. This gentleman is
14 entitled to cross examine him,
15 but to ask him now "I want you to
16 re-jigger this to my
17 specifications," is not
18 appropriate for adversary counsel
19 in the middle of a hearing to
20 say, "Let's come up with a better
21 report or I want you to furnish X
22 Y and Z."

23 MR. LEWIS: That's not what
24 I'm asking.

25 THE ARBITRATOR: Mr. Crowe,

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1 CROSS-EXAMINATION MR. FLAHERTY

2 Q. Were documents provided to you
3 on different occasions or did they come
4 together?

5 A. Different occasions.

6 Q. And do you recall from whom you
7 received the documents?

8 A. No. As I said, my recollection
9 of my primary contact was Michelle.
10 Not to say I didn't get things directly
11 in another way.

12 Q. Okay. Mr. Flaherty, did you
13 review your report in preparation for
14 your testimony today?

15 A. Yes.

16 Q. Did you review your source
17 documents in preparation for your
18 testimony today?

19 A. Yes.

20 Q. Can you share with us the Sample
21 Loss Margin Versus Sarah document?

22 MR. CROWE: Objection. Is
23 he calling for discovery at this
24 stage in proceeding?

25 THE ARBITRATOR: Counsel,

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1 CROSS-EXAMINATION MR. FLAHERTY
2 that was not the question. The
3 question was simply could he
4 provide this.

5 But Mr. Lewis, I'm not
6 sure where we are going with
7 this. I mean, the date of this
8 report is February 12, 2020. We
9 had a schedule. We had a
10 discovery schedule. I don't
11 remember right now when this was
12 served, but I believe it was back
13 in early 2020. And there was
14 plenty of time to ask for this
15 sample loss margin against Sarah
16 or any other document.

17 I'm not understanding,
18 you know, why a request is being
19 made now at the hearing rather
20 than having this being done
21 earlier. I'm not going to
22 interrupt the hearing to have the
23 witness begin searching around
24 for documents.

25 So on that basis, I

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1 CROSS-EXAMINATION MR. FLAHERTY
2 think the objection is sustained.
3 Next question.

4 MR. LEWIS: To the extent
5 that document is with Mr.
6 Flaherty, may we question him
7 about it? May I examine him
8 about the document?

9 MR. CROWE: Objection.

10 THE ARBITRATOR: Do you have
11 the document with you, Mr.
12 Flaherty?

13 THE WITNESS: I'm on a
14 computer. I could get on my
15 server and get to it at some
16 point.

17 THE ARBITRATOR: It's not
18 with him. He'd have to go at
19 some point to find it. You just
20 heard the answer. Let's move on.

21 MR. LEWIS: Thank you.

22 THE ARBITRATOR: Mr. Lewis,
23 I'm not sure you want me to see
24 that.

25 Q. Mr. Flaherty, you were asked

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1 CROSS-EXAMINATION MR. FLAHERTY
2 made the second purchase in 2016 for
3 that year?

4 A. I don't believe they did.

5 Q. What do you base that on?

6 A. I'm just thumbing through my
7 report here on the other screen so bear
8 with me. If you go to Attachment 1,
9 Page 204 on my PDF, it's Page 13, if
10 that helps.

11 Q. It's after your Attachment D?

12 A. Yes. Next page, I believe.

13 Q. All right.

14 A. Next page after that. There you
15 go. Scroll back up to the top. The
16 top of that page. Okay.

17 What I did was I looked at the
18 seasonal buying patents, and what these
19 invoices that we had for 2011.

20 Q. Okay.

21 A. You can see that those purchases
22 were September, October seasonal
23 purchases, not June.

24 Q. So this is through 2012 that you
25 have listed here. Am I missing --

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1 CROSS-EXAMINATION MR. FLAHERTY
2 during your direct-examination about
3 this paragraph, "Minimal Inventory
4 Purchases." Do you recall that?

5 A. Yes.

6 Q. Do you recall testifying about
7 how you -- in this paragraph it states
8 you're calculating for four and a half
9 years of damages, but in the actual
10 report you use five years of damages;
11 do you recall that?

12 A. The report is five years, yes.

13 Q. My question, again, is: Do you
14 recall testifying about how, in this
15 paragraph, you say that you're
16 calculating 4.5 years of damages and
17 \$4,050,000; do you recall that?

18 A. Yes, I agree. The sentence
19 says, "Four and a half years for
20 400,050,000," the calculation is
21 because of the seasonal obligations
22 under the contract. It was four
23 million five, yes.

24 Q. Do you recall whether Forall had
25 already made the spring -- had already

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1 CROSS-EXAMINATION MR. FLAHERTY
2 A. No, that's it.

3 Q. So you didn't take into account
4 '13, '14, '15 or '16 here?

5 A. Well, what I determined is that
6 they had not made the seasonal purchase
7 as of June when the store shut down,
8 and they had not made the seasonal
9 purchase because I looked back to the
10 previous year and the seasonal purchase
11 were September, October purchases.

12 Q. Mr. Flaherty, did someone
13 provide you with this historical
14 purchasing information here, the dates
15 of this historical purchases?

16 A. Yes.

17 Q. Someone at Forall or their
18 accounting department provided you that
19 historical information, right?

20 A. Yes.

21 Q. Why wouldn't you just ask them
22 to provide you the data for 2016 so you
23 could determine in actuality whether
24 Forall had made the purchase in 2016?

25 A. I didn't do that.

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CROSS-EXAMINATION MR. FLAHERTY

Q. Mr. Flaherty, you would include information from 2011 and 2012 to support what you're relying on that now to support an inference that Forall did not make the second purchase of 2016, when you had that information available to you.

THE ARBITRATOR: Is that a question, Counselor?

MR. LEWIS: Yes, it is,

Mr. Farber.

Q. Is that your testimony, Mr. Flaherty?

THE ARBITRATOR: That's a question. Go ahead.

A. Yes. I utilized this to demonstrate that the seasonal buying patterns are after June.

Q. But, Mr. Flaherty, you understand that an expert's report has got to be reliable, and you had the information for 2016 from Forall's accounting people, but instead you chose to rely on 2011 and 2012?

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CROSS-EXAMINATION MR. FLAHERTY

assumes that this was available to him, and it -- it constitutes a statement of counsel and that's not a question.

THE ARBITRATOR: Overruled.

You can answer it, Mr. Flaherty.

A. So the document we are looking at is -- is a document that was already prepared back in 2011 and '12, and it was related to the Forall incurring and the build out costs related to the new location. Okay. I never received daily sales from Forall to Sarah. I didn't have that information.

Q. Mr. Flaherty, you understand that's not what I'm asking you at all. What we are talking about is whether Forall made the second season purchase in 2016, and you said you don't believe they did. I asked you why do you not believe so and you took me to this page.

So, Mr. Flaherty, my question to

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CROSS-EXAMINATION MR. FLAHERTY

MR. CROWE: Objection.

Q. Why would you do that?

THE ARBITRATOR: Hang on.

Why don't you recast it as a question. "You had the information, but instead you relied on," that's a statement. It may be a correct argument, but if you want to make it a question do that, Mr. Lewis.

MR. LEWIS: Thank you, Mr. Farber.

Q. Mr. Flaherty, why would you rely on 2012 and 2011 data when you had the 2016 data available to you?

A. I didn't have the 2016 data.

Q. Mr. Flaherty, you just said that Forall's accounting people provided this historical data to you. Of course you had 2016 available to you.

MR. CROWE: Objection.

THE ARBITRATOR: What's the objection?

MR. CROWE: It's -- it

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CROSS-EXAMINATION MR. FLAHERTY

you is: Why would you rely on 2011 and 2012 data to determine that Forall didn't make the second season purchase in 2016 instead of relying on the actual data in 2016?

A. I feel like I've answered this. I didn't have the 2016 data.

Q. Mr. Flaherty, to whom did you ask for it? Who did you ask for it?

A. I don't believe I did.

Q. Mr. Flaherty, you are making a determination, this is \$450,000 determination that Forall had not made the second season purchase in 2016, and you didn't bother to ask Forall whether they did or not?

MR. CROWE: Objection.

THE ARBITRATOR: Guys.

Guys. Mr. Flaherty, do you know right now -- what is your best information as to whether or not the second season '16 was ordered, I guess, it would have been ordered by Forall, itself,

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1 CROSS-EXAMINATION MR. FLAHERTY
2 because Forall, itself, was the
3 one who was running the store
4 then. It's your information that
5 it was ordered or was not
6 ordered?

7 THE WITNESS: I don't know.

8 THE ARBITRATOR: You don't
9 know. Okay. Okay. Next
10 question.

11 Q. Mr. Flaherty, you don't know but
12 yet you included that \$450,000 in your
13 damages calculation; is that true?

14 MR. CROWE: Objection.

15 A. That is true.

16 THE ARBITRATOR: Overruled.
17 He can answer.

18 A. Yes, that is true.

19 Q. Mr. Flaherty, I know we've gone
20 over this ad nauseam. What documents
21 you were provided and what you relied
22 upon. Through the course of your
23 testimony, did anything else come to
24 mind, anything else you recall
25 reviewing now?

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1 CROSS-EXAMINATION MR. FLAHERTY
2 A. I believe that is correct.

3 Q. Okay. Mr. Flaherty, you were
4 testifying - I admit here, I just want
5 to get clarification for what your
6 testimony was - you were talking about
7 these documents here and you said that
8 you -- you gave them -- and I'm
9 paraphrasing -- more credence because
10 they were accounting documents; is that
11 a fair summary?

12 A. I gave them credence because
13 they were accounting documents, yeah.

14 Q. And that was because of these
15 references here under source?

16 A. What I was trying to demonstrate
17 is that -- when I requested this
18 information, I just didn't get an excel
19 document prepared at that time. This
20 was a document that it was sourced to
21 contemporaneous accounting entries back
22 in '16, '17, '18, '19.

23 Q. Okay. When you say "it was
24 sourced to that," did you receive the
25 actual accounting data or did you

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1 CROSS-EXAMINATION MR. FLAHERTY
2 THE ARBITRATOR: Anything
3 else he relied upon, Mr. Lewis?

4 MR. LEWIS: That's correct,
5 Mr. Farber.

6 A. I don't think anything comes to
7 mind. No. Nothing comes to mind.

8 Q. Okay. Now, the operating
9 agreements that -- you didn't review
10 those?

11 A. I --

12 Q. I misspoke. Not the financial
13 statements; you didn't review those?

14 MR. CROWE: Objection.

15 Whose financial statements? Why
16 is it relevant?

17 MR. LEWIS: Mr. Crowe,
18 that's not an objection. I'm
19 asking Mr. Flaherty if he
20 reviewed financial statements.

21 You've got a long list from
22 several witnesses now.

23 Q. Mr. Flaherty, am I correct that
24 you did not review financial
25 statements?

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1 CROSS-EXAMINATION MR. FLAHERTY
2 receive the summary referencing that
3 sourced data like we see here in your
4 report?

5 A. It's a summary referencing that
6 data.

7 Q. Okay. What did you do to test
8 the accuracy of this data?

9 A. Other than, you know, discussing
10 with the accounting group and determine
11 that they were very professional and
12 that these were coming from real
13 accounting entries, I didn't test.

14 Q. You just took Forall's word for
15 it?

16 A. The accounting documents for it.

17 Q. You took their word for the
18 veracity of the documents dated
19 therein, correct?

20 A. Correct.

21 MR. CROWE: Objection.

22 Q. You didn't test it yourself,
23 correct?

24 A. Correct.

25 MR. LEWIS: Mr. Farber, if I

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1 CROSS-EXAMINATION MR. FLAHERTY
2 may just collect my thoughts, I
3 may not have anything further.

4 THE ARBITRATOR: All right.
5 Sure.

6 MR. LEWIS: Can we take the
7 customary five?

8 THE ARBITRATOR: Okay.
9 Let's take five.

10 (Whereupon, a recess was
11 taken at this time.)

12 THE ARBITRATOR: Anything
13 further, Mr. Lewis?

14 MR. LEWIS: Just one more
15 thing.

16 THE ARBITRATOR: All right.

17 Q. Mr. Flaherty, can you see my
18 screen?

19 A. Yes.

20 Q. Just drawing your attention to
21 inventory on-hand, you reported at the
22 time of the store closing there were
23 \$773,811 of inventory at the store; do
24 you see that?

25 A. Yes.

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1 RE-DIRECT EXAMINATION MR. FLAHERTY

2 A. That's true.

3 MR. LEWIS: Nothing further,
4 Mr. Farber.

5 THE ARBITRATOR: Mr. Crowe,
6 anything further?

7 MR. CROWE: Just a couple of
8 points, Mr. Farber.

9 RE-DIRECT EXAMINATION
10 BY MR. CROWE:

11 Q. There was just a great deal of
12 back and forth and questions about this
13 \$450,000 in the fall of 2016 that's
14 included in your report, Mr. Flaherty.

15 Did you -- did you ever hear
16 that Sarah made any purchases in 2016
17 as opposed to Forall? In other words,
18 do you know whose obligation it was to
19 make those purchases under the contract
20 in 2016?

21 MR. LEWIS: Objection.

22 THE ARBITRATOR: Sustained,
23 Mr. Crowe. That's two questions
24 that are very different.

25 MR. CROWE: Okay.

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1 CROSS-EXAMINATION MR. FLAHERTY

2 Q. And what did you do to test that
3 number?

4 A. Again, I received an accounting
5 document from the accounting group that
6 had that number. I accepted it.

7 Q. You accepted it. You didn't do
8 any independent testing of the accuracy
9 of that number?

10 A. I did not.

11 Q. What about Forall's estimate
12 that the cost of losses on such was 10
13 percent; did you do anything to test
14 that estimation?

15 A. I didn't do any test other than
16 to understand the reason for it being
17 that the inventory had to be pulled and
18 moved to New Jersey or either back to
19 Jersey or liquidator all I did.

20 Q. You had not tested the starting
21 point, the 773,811 number, you did not
22 -- you did not support or -- you have
23 no basis for this number being in your
24 report other than the fact that Forall
25 told you; is that safe to say?

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1 RE-DIRECT EXAMINATION MR. FLAHERTY

2 THE ARBITRATOR: I mean.

3 You ought to break them up. One,
4 you're asking about a legal
5 obligation. Another one you're
6 asking if something happened. Go
7 ahead.

8 Q. Do you know who under the
9 contract was required to make those
10 purchases in fall 2016 to shelve the
11 inventory?

12 MR. LEWIS: Objection.

13 THE ARBITRATOR: What's the
14 objection?

15 MR. LEWIS: That calls for a
16 legal determination as part of
17 what we are here for today.

18 THE ARBITRATOR: No.
19 Overruled. I'm not talking it as
20 a legal conclusion. The question
21 is just the witness's knowledge
22 for whatever that is worth to me
23 because I have the contract.

24 But go ahead. Do you
25 know?

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1 RE-DIRECT EXAMINATION MR. FLAHERTY

2 A. My understanding was that it
3 would be Sarah that would be
4 responsible.

5 Q. So isn't it true that all the
6 questions by colleague, Mr. Lewis, as
7 to what Forall bought or what Forall
8 may have purchased and may have
9 supplied are of no consequence under
10 the analysis?

11 THE ARBITRATOR: Is there an
12 objection to that question?

13 MR. LEWIS: Yes.

14 THE ARBITRATOR: Sustained.
15 That's for me to decide whether
16 Mr. Lewis's questions are of
17 consequence. Not for this
18 witness. Next question, if any.

19 Q. There was also a good deal of
20 discussion about the source material
21 for your -- your margin calculation.
22 You remember Mr. Lewis's questions in
23 that regard?

24 A. Yes.

25 Q. Isn't it true that the source

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1 RE-DIRECT EXAMINATION MR. FLAHERTY

2 material for the margin calculation
3 amounts to a hill of beans when your
4 colleague, Mr. Salsbery, agrees with
5 you on the calculation in the industry
6 of 50 percent?

7 THE ARBITRATOR: Counsel, I
8 think that's for me to decide.

9 Q. Did your colleague, Mr.
10 Salsbery, agree with you as to what the
11 appropriate margin calculation is in
12 his report?

13 A. Yes. He agreed that the margin
14 calculation was reasonable compared to
15 the industry.

16 Q. Okay. And he only called
17 qualmed with you on the variable, but
18 he did by in large, you did a swell job
19 on that issue of margin, right?

20 MR. LEWIS: Objection.

21 THE ARBITRATOR: I've read
22 both reports, so I know about
23 that. Sustained.

24 MR. CROWE: One second,
25 please. Very good. That's all I

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1 RE-DIRECT EXAMINATION MR. FLAHERTY
2 have.

3 THE ARBITRATOR: Anything
4 further, Mr. Lewis?

5 MR. LEWIS: Nothing further.

6 THE ARBITRATOR: Mr.
7 Flaherty, thank you very much.
8 Your testimony as a witness is
9 excused. Thank you.

10 THE WITNESS: Thank you.

11 THE ARBITRATOR: Who's our
12 next witness? Well, let me ask
13 Mr. Brown, do you have any
14 further witnesses?

15 MR. BROWN: No, sir.

16 THE ARBITRATOR: Mr. Lewis,
17 you have something in rebuttal, I
18 think?

19 MR. LEWIS: I do. And I
20 apologize, I know we are just
21 coming off the short break, but I
22 know Mr. Salsbery -- well, I'll
23 ask him.

24 Would you like to take
25 five before we get started, Mr.

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1 RE-DIRECT EXAMINATION MR. FLAHERTY
2 Salsbery?

3 THE WITNESS: Yes. If
4 that's okay, please.

5 THE ARBITRATOR: All right.
6 How long do you think your
7 testimony is -- your questioning
8 is going to be with Mr. Salsbery?

9 MR. LEWIS: I don't think we
10 are going to need to do much.

11 THE ARBITRATOR: Okay.

12 MR. CROWE: Mr. Salsbery --

13 THE ARBITRATOR: Gentlemen,
14 what I'd like you to do, all
15 right, I'm going to make this
16 break 10 minutes, because I want
17 you to talk to each other in this
18 respect: When I end a case like
19 this -- and look, this a
20 significant matter. There's a
21 significant claim here, you know,
22 and I recognize that, and I have
23 to make a significant decision
24 here.

25 So my thought is not to

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RE-DIRECT EXAMINATION MR. FLAHERTY

have closing argument this afternoon. But to give each side an opportunity to review the transcript, give me a closing brief, and then and it's certainly not going to take more than one or two hours, have closing argument in another Zoom session, where you can -- just one brief each. I don't like answering briefs because they get expensive.

And that's -- you know, that's my preference, but I'm willing to hear argument to either counsel as to how to end this matter. And you know, what I'd like you to do in the next few minutes is talk to each other, and if you agree that that's the way to go, then look at your calendars, and give me dates.

You know, obviously, we

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RE-DIRECT EXAMINATION MR. FLAHERTY

are coming up on holidays, and I don't want to intrude on anyone's holiday. On the other hand, we -- you know, this has been going on a long time. The store closed here in 2016. And I'm pretty quick about getting out decisions, so I will get out a decision pretty quickly.

But I -- I want to facilitate your calendars, Counselor, particularly, all right. So think about what I've said, and take your five minutes and then take another five and talk to each other, all right?

I've got 3:00. Tell you what, since this witness is going to be short, why don't we make it 15 minutes, we'll come back at 3:15. Thank you all.

(Whereupon, a recess was taken.)

THE ARBITRATOR: Mr.

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Salsbery, if you can stand, raise your right hand. Do you solemnly swear the testimony you're about to give in this arbitration proceeding will the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

THE ARBITRATOR: Could you be seated, spell your full name and address, please?

THE WITNESS: Chad, C-H-A-D; Salsbery, S-A-L-S-B-E-R-Y. My address is 50 News Street, North West 3405, Grand Rapids, Michigan 49503.

THE ARBITRATOR: Mr. Salsbery, you patiently sat through a number of witnesses, so you know the protocols that are used in connection with the testimony.

Mr. Crowe is going to ask you some questions, pause, if

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Mr. Lewis says the word "objection," then don't answer until I tell you. And I have read your report, as I've read the other report.

I'm sorry. I got it wrong. Mr. Lewis is going to ask you questions. Wait until -- to see if Mr. Crowe says the word "objection."

Mr. Lewis, why don't you proceed.

MR. LEWIS: Who is going to handle this witness on behalf of Forall?

MR. CROWE: I'm sorry.

MR. LEWIS: Who is handling on behalf of Forall? Crowe, okay.

CHAD SALSBERY, the witness herein, having been first duly sworn by the arbitrator, was examined and testified as follows:

DIRECT-EXAMINATION

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1 DIRECT-EXAMINATION MR. SALSBERY
2 BY MR. LEWIS:

3 Q. Mr. Salsbery, you sounded a
4 little faint.

5 A. Can you hear me now?

6 THE ARBITRATOR: Mr. Lewis,
7 I'm having a little trouble
8 hearing you.

9 MR. LEWIS: Mr. Farber,
10 you're saying you're having
11 trouble hearing me as well?

12 THE ARBITRATOR: Better now.
13 Go ahead.

14 A. Can you hear me?

15 Q. It sounds a little faint. What
16 about for everyone else?

17 MR. CROWE: It sounds like
18 an echo or it's a very bad
19 connection somehow. I mean, I
20 can make it out.

21 A. I apologize. If I sound like
22 I'll yelling. I'm going to be trying
23 to make sure that you can hear me, so I
24 apologize.

25 Q. Mr. Salsbery, thanks for

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1 DIRECT-EXAMINATION MR. SALSBERY
2 the entirety of Mr. Flaherty's
3 testimony?

4 A. I did.

5 Q. And you reviewed Mr. Flaherty's
6 report?

7 A. I did.

8 Q. You prepared a rebuttal report?

9 A. That's correct.

10 Q. Do you believe that Mr. Flaherty
11 has sufficiently supported his damages
12 calculation in this matter?

13 A. I do not. In my opinion, Mr.
14 Flaherty has failed to provide
15 sufficient support for his
16 calculations. The data that he is
17 relying upon, in my opinion, is
18 unreliable. And based upon his
19 testimony, he hasn't done the level of
20 due diligence that's necessary to opine
21 on damages.

22 And I'll just say this: In the
23 23 years that I've been doing economic
24 damages, I have never seen an expert
25 put forth a lost profit calculation

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1 DIRECT-EXAMINATION MR. SALSBERY
2 testifying today and for your patience.
3 You heard Mr. Flaherty's testimony,
4 correct?

5 A. Correct.

6 Q. Before we get started, I want to
7 share with Mr. Farber a little bit
8 about your background.

9 A. Sure. Yeah. So I have been
10 working doing economic damages for over
11 20 years. That -- that work includes
12 work related to the scope of my
13 testimony today.

14 I've worked on projects
15 determining damages, including lost
16 profits, lost business value, business
17 interruption and lost earnings.

18 I have a degree from Indiana
19 University in finance and I am a
20 certified valuation analyst. I've
21 worked on hundreds of cases dealing
22 with lost profit, and I've been
23 retained as an expert on well over
24 25 cases.

25 Q. Mr. Salsbery, you've listened to

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1 DIRECT-EXAMINATION MR. SALSBERY
2 without reviewing the other party's
3 financial statements.

4 In my opinion, based on the fact
5 that these damages haven't been
6 supported, I don't think they've met
7 the burden to justify any damages for
8 Forall.

9 MR. CROWE: Objection. The
10 witness's determination --

11 THE ARBITRATOR: Hang on.
12 There's no pending question.
13 Let's wait for a question before
14 we hear an objection.

15 Go ahead.

16 Q. Do you recall Mr. Flaherty
17 including in his report a damages
18 calculation over a -- in one section he
19 says four-and-a-half-year period,
20 another section he says a five-year
21 period; do you recall that?

22 A. I do. I do.

23 Q. And what is your opinion as to
24 what would be a proper damage
25 calculation if Forall was entitled to

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1 DIRECT-EXAMINATION MR. SALSBERY
2 any -- the time frame for damages
3 calculation if Forall was entitled to
4 damages?

5 A. Sure.

6 Q. Let me withdraw that question.

7 You heard that Mr. Flaherty
8 testified that in his report he's got
9 four and a half years, but he actually
10 calculated over five years, right?

11 A. Correct.

12 Q. What are your thoughts about the
13 difference between those two and which
14 one would be more?

15 A. In my opinion, again, assuming
16 that they provided the relevant
17 information, everything that I say is
18 assuming that, the appropriate period
19 is -- and again, this isn't taking
20 mitigation into account. The
21 appropriate period would be four and a
22 half years.

23 And the reason why I believe
24 that -- I heard his testimony, and I
25 believe that he had a period of time

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1 DIRECT-EXAMINATION MR. SALSBERY
2 on the K Mart, they bought most of
3 their inventory for the winter back in
4 May, spring, early summer. So in my
5 opinion, that \$450,000 that he
6 concludes in 2015 is inappropriate, and
7 the fact that he didn't look to see if
8 they actually made the buy, it goes to
9 my point that his opinion is unreliable
10 and unsupported.

11 So I think the \$4,050,000 before
12 mitigation is the appropriate loss
13 sales amount.

14 THE ARBITRATOR: Mr.

15 Salsbery, let's assume that
16 you're right, and that the buy
17 for '16, '17, should have already
18 been made by September of '16,
19 wouldn't there still be damage as
20 a result of the fact that there
21 was no ability to sell because
22 the store shut down, and that the
23 retail outlet, therefore,
24 couldn't realize profit as -- in
25 connection with the purchase of

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1 DIRECT-EXAMINATION MR. SALSBERY
2 from September through the -- through
3 the end of 2015, the \$450,000, I don't
4 believe that's an appropriate loss
5 sales amount.

6 And I base that on a number of
7 things. One, I have significant
8 experience in the retail business.
9 I've worked on a number of matters for
10 K Mart. I worked on the K Mart
11 bankruptcy. So I understand purchasing
12 and when company makes purchases. In
13 fact, my own family has their own
14 retail operation. Nowhere near the
15 size of Forall.

16 But as of August -- when you're
17 buying merchandise in the retail
18 business for that winter season, you
19 bought it well in advance of August.
20 Because if you haven't bought in
21 advance -- if you're buying it in
22 September, by the time you buy it or
23 get it shipped and delivered, you're
24 going to miss the holiday season.

25 So when I worked, for example,

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1 DIRECT-EXAMINATION MR. SALSBERY
2 that product?

3 THE WITNESS: Potentially,
4 Mr. Farber, and one of the things
5 -- I'd have to see data to
6 understand how to determine those
7 damages. For one, if that
8 inventory was purchased, let's
9 just say May or June, that might
10 be the inventory they're claiming
11 that was in the store at the
12 time.

13 So I don't know because
14 I don't have the data. They
15 didn't provide that to determine
16 how much of that -- that buy for
17 that season is already being kind
18 of requested as a loss, because
19 they had that inventory in the
20 store and they're requesting a
21 loss on it.

22 And, then, secondly,
23 assuming that they made a
24 purchase that it wasn't
25 delivered, I'd have to see what

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DIRECT-EXAMINATION MR. SALSBERY
they did with that merchandise;
were they able to sell it to some
other party, or did they also
lose on that.

They didn't make the
claim, so I'm not sure. So to
answer your question, it's
possible, but --

THE ARBITRATOR: Just one
other question about which I
heard some testimony, and that is
other witnesses have testified
that the usual timing of seasons
does not necessarily apply to the
Las Vegas market because of the
extreme heat in the summer, and
the seasons are somewhat off; did
you take that into account when
you responded earlier to what Mr.
Lewis was asking you about?

THE WITNESS: Well, I did
consider that. And again, when
people -- I understand the shops
are at Caesars Palace in the

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DIRECT-EXAMINATION MR. SALSBERY
where you want to go. The next piece I
want to ask you about is the mitigation
period.

A. Yes. If you could go to -- and
I'm sorry if I'm looking down, and I
want to make sure I get the right page
number here, but if you look at Page 7
of my report.

Actually, let's flip back to
page -- right there. Let's go down
there. Paragraph 18.

THE ARBITRATOR: This is
where you opine that they could
have found someone else in
18 months?

THE WITNESS: That's
correct, Mr. Farber.

A. I just want to make a point.
Mr. Flaherty made a point about this
duty to mitigate. And so I understand
that there's a legal issue with that,
but in my history and my experience of
doing economic damages, and I've
provided this support here, there are

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DIRECT-EXAMINATION MR. SALSBERY
Forum, and so a lot of people
that go there aren't necessarily
people from Las Vegas.

It could be somebody
like me, from Michigan. The fact
that it's warm or not -- I don't
know how the weather in Las Vegas
would affect somebody like me if
I'm going back to a cold weather
city.

So if it does have an
effect, I don't know what the
impact is, but I could also see
--

THE ARBITRATOR: Go ahead,
Mr. Lewis.

Q. Mr. Salsbery, are you able to
see my screen?

A. I am.

Q. Is this the rebuttal report that
you prepared in this matter?

A. Yes, it is.

Q. I'm going to leave it up and I'm
going to ask you to just direct me

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DIRECT-EXAMINATION MR. SALSBERY
certain treatises that I rely upon.
That I think a lot of damages experts
rely upon.

And so I just want to point this
out. If you look at the point that I
make. I say, "I understand that Forall
is required to act reasonably to
mitigate its incremental lost profits.
The mitigation is the action taken by
Forall to avoid or reduce its damages."

That's not just my opinion.
That's the opinion of -- there's a
number of books that I reference here.
One is called, "The Litigation Services
Handbook," that's a very well known --
it's a book that I rely upon. The
second one is another book by Robert
Dunn. It's called, "Recovery of
Damages For Lost Profits."

And so there may be a legal
aspect. I'm not trying to opine on
that, but on the standpoint of putting
together a damages calculation, it is
my opinion that the harmed party does

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1 DIRECT-EXAMINATION MR. SALSBERY
2 have a duty to mitigate. And just
3 because they don't actually mitigate,
4 doesn't rule out mitigation. And I
5 just want to make that point first.

6 And then, if we want to go to
7 Mr. Farber's question, if you go to the
8 next paragraph, the next section, 19.
9 So that's exactly right. So the
10 question is: How did I come up with
11 the 18-month period? And I recognize
12 that Forall didn't actually go out and
13 find an operator, so what I wanted to
14 do was I went back and looked at the
15 discovery record to see, well, had this
16 kind of circumstance had ever occurred
17 during the course of performance of
18 this agreement; and as we've been
19 discussing through this arbitration,
20 I've heard different discussions about
21 it. They in fact did.

22 So in order to determine the
23 18-month period, there is two things
24 that I looked at: One, what the time
25 frame that it would have taken -- could

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1 DIRECT-EXAMINATION MR. SALSBERY
2 that's how I came up with the 18-month
3 time period.

4 Q. And Mr. Salsbery, would the
5 store that could have been pursued and
6 opened to mitigate damages, would that
7 have had to have been in Las Vegas?

8 A. My understanding is that per the
9 agreement that there could have been a
10 store in Las Vegas. I understand there
11 was discussions of a store in Beverly
12 Hills, and there was also a discussion
13 to a store in Chicago.

14 To my understanding and it's
15 just, again, an understanding, I don't
16 know if this is legally accurate. Is
17 that operator just needed to purchase
18 \$900,000 of merchandise, whether the
19 store was in Vegas, Beverly Hills, or
20 Chicago.

21 Q. So in terms of the mitigation,
22 you are not specifically targeting or
23 suggesting that there would have been
24 another Las Vegas, just another U.S.
25 presence?

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1 DIRECT-EXAMINATION MR. SALSBERY
2 have taken, Forall, if they were
3 actively trying to find a new operator.
4 And I made the determination that --
5 it's there on Paragraph 20 -- that
6 Sarah was running into problems and
7 they wanted to find somebody else to
8 take over the operation. Forall
9 assisted them and they found Italnord
10 to take over that operation, and it
11 took them seven months to identify
12 them. That's the first part.

13 Second part is: We have to find
14 a store, and you have to build that
15 out. So I went and I looked -- and if
16 you look at Paragraph 21, Mr. Lewis, if
17 you scroll down. I went and looked and
18 said, "In 2011, it took Sarah six
19 months from the time period that they
20 signed the agreement to open the store
21 in Las Vegas." So I took the seven
22 months, plus the six months, and I came
23 up with 13 months.

24 And to be conservative, I added
25 another five months on to that and

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1 DIRECT-EXAMINATION MR. SALSBERY
2 A. Correct. And I would say that
3 it could have been in Las Vegas and it
4 could have been in any other of those
5 other cities. And I will note --
6 because I'm sure this is going to be a
7 question that comes up and I might as
8 well address it now -- is that I heard
9 that the store closed and that there --
10 there's an issue as to who's at fault
11 as to why the store closed.

12 And that that had a negative
13 impact on Forall's reputation. And
14 that would make it harder for them to
15 open up a store. A couple of things, I
16 took that into consideration when I
17 heard that testimony. I think it was
18 yesterday and maybe even today.

19 And I'll note that I have not
20 seen anything in the discovery records
21 that indicate that they were having
22 issues finding a new operator. I
23 didn't find any issues. I went online,
24 again, this was not -- I didn't see any
25 news articles or anything like that

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1 DIRECT-EXAMINATION MR. SALSBERY
2 that were negative. And if there was,
3 in fact, any negative -- because I can
4 understand, there may be some neglect
5 views because your store closed down.
6 I would think that difficulty would be
7 covered by that additional five months
8 that I added on.

9 Because remember, I said seven
10 months, plus six months, then I gave an
11 additional five months. So if there
12 was an additional difficulty, I think
13 it would be captured in that additional
14 five months in my calculation.

15 THE ARBITRATOR: Mr.
16 Salsbery, let me ask you two
17 things in following on what
18 you're now testifying about.

19 Number one, do you know
20 factually if since 2016 as a
21 result of whatever research
22 you've done, if Forall has opened
23 another store in the United
24 States?

25 THE WITNESS: It was unclear

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1 DIRECT-EXAMINATION MR. SALSBERY
2 that was an experienced operator;
3 although, his experience was in
4 Mexico, principally. They didn't
5 make it.

6 Then I had Forall. And
7 now there's a lot of disagreement
8 as to, you know, should -- was
9 there a possibility that Forall
10 could have continued if there
11 would have been a response to a
12 request for an extension, maybe
13 they would have reconsidered, but
14 certainly there was no notice
15 given for six months, and,
16 therefore, by September 1st --
17 not -- by September 30th, not
18 August 30th or 31st, they would
19 have been out also.

20 And by all indications, they
21 also didn't make it.

22 So you're going to have
23 a situation where -- sure, it
24 might be a different city, but
25 anyone looking at a track record

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1 DIRECT-EXAMINATION MR. SALSBERY
2 to me. I did not see another
3 store mentioned when I did my
4 search. I did not see that.

5 THE ARBITRATOR: Now, you
6 posting 18 months, and you gave
7 your reasons for posting
8 18 months, but what are you
9 attribute -- how -- what factors,
10 if any -- let me rephrase that.

11 I mean, I've got a
12 situation here where I had three
13 different operators who had a
14 very prime location next to a
15 bunch of other very up-scale
16 outlets in the Forum Mall at
17 Caesars.

18 Sarah, you know, looked
19 for help; they went out and found
20 Italnord. Sarah was not being
21 profitable and wanted out,
22 presumably, and that's why they
23 got Italnord.

24 Italnord did not
25 continue. By all indications,

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1 DIRECT-EXAMINATION MR. SALSBERY
2 is going to see three different
3 operators haven't made it with
4 this store, in a pretty good
5 location, in a pretty good mall.
6 Now, I should accept, despite
7 that there should be mitigation
8 because in 18 months Forall would
9 be successful in finding a fourth
10 entity.

11 How do you respond? I
12 know that is a rambling question,
13 but I think you get the essence
14 of my ramble.

15 THE WITNESS: I do, Mr.
16 Farber, and it's a good question.
17 The one -- the one point that
18 I've heard in the testimony of
19 the last few days, I think it
20 might have been this morning,
21 that Forall was recovering. I
22 think one of the witnesses
23 testified that they were
24 recovering.

25 So I don't know if the

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DIRECT-EXAMINATION MR. SALSBERY
situation -- the reason why Sarah failed in the time that they operated, Italnord failed, and then Forall failed, was because the company, I understand, had its own operating also losses.

But I do remember that one of the witnesses earlier today, I believe, said that they were recovering. So I guess my point is: If you have this brand, that's -- from what I heard from the Forall people -- is very profitable, you know, their competitors are all these top end providers. If they're covering, maybe someone can get in early on them.

I don't know. I'm just giving you my rational as to why someone would take over the store. I haven't done the research. I'm just letting you know that would be one of the

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DIRECT-EXAMINATION MR. SALSBERY
that Forall tried to find somebody to take over the operation.

Because, Mr. Farber, to your point, if they had tried and you show record of them out there in the marketplace of them trying and it just failed, then I would agree. There would be no mitigation, right?

Because if -- if someone showed me -- "Mr. Salsbery, here's all the efforts we did and tried, and it failed," then I wouldn't say that you have to have mitigation. You have to at least have an effort.

And I just want to point out, I understand that it took Forall approximately, I want to say, 15 months after the time the store closed to give notice that the minimum purchases weren't being met. And I just want to say that's a significant fact to me, because -- two things: One, to me -- and this is just my opinion -- it indicates that Forall wasn't even

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DIRECT-EXAMINATION MR. SALSBERY
reasons why I could see someone wanting to come in and take over the operations.

THE ARBITRATOR: All right.

Go ahead, Mr. Lewis.

Q. Mr. Salsbery, I can't recall when you began listening on testimony. Do you remember testimony about a fourth operator being identified in November of 2014?

A. I do not. I do not, Mr. Lewis.

Q. Let's go back to your report.

In the next piece -- well, do you want to speak more about the mitigation or do you want to go to the next topic which will be the cost and margin?

A. The last point I would just like to make on the mitigation is --

Q. Let me bring your report back up then, please.

A. Sure. And again, this is just -- it's, again, based upon what's been testified in the last day or two.

I haven't heard anybody testify to say

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DIRECT-EXAMINATION MR. SALSBERY
attempting to mitigate. And secondly, by putting Sarah on notice right after the store closes, it would give them an opportunity to assist Forall in trying to mitigate, similar to how they -- my understanding was how they helped to try to find Italnord.

So Forall's lack of just even notice -- it wasn't the fact that they weren't trying to mitigate, and didn't give Sarah the opportunity to say they'll go out and try to find another party to help assist and get the operator.

THE ARBITRATOR: All right.

Go ahead, Mr. Lewis.

Q. Is there somewhere else you'd like to take us on mitigation?

A. Yes. The next point is: So when you do loss profits, right, the first line is the damage period. So we've talked and this is my opinion, that the four-and-a-half-year period is appropriate, which is really 54 months.

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1 DIRECT-EXAMINATION MR. SALSBERY
2 And if that's the period, then it would
3 be 4,050,000.

4 But in my opinion, it's
5 18 months. So the 18-month period
6 would translate into, assuming, the
7 \$900,000 per year, would translate into
8 loss sales of -- right here. Thank
9 you. \$1,350,000.

10 So how you do loss profit, the
11 next thing -- once you have your damage
12 period, then you determine the sales
13 for that damage period. Considering
14 mitigation, the next thing you do is
15 you determine what are the incremental
16 costs that have to be offset against
17 the loss sales group.

18 And so I understand -- and I
19 think counsel for Forall made the point
20 at the very end of the last session
21 that I agreed with Mr. Flaherty's
22 margin percentages, and that couldn't
23 be any farther from the truth.

24 You've read my report. I
25 completely disagree with his margin

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1 DIRECT-EXAMINATION MR. SALSBERY
2 If you look at a company's
3 financial statements and operating
4 cost, operating costs are traditionally
5 either variable or fixed or there are
6 certain types of operating costs that
7 have components of those fixed end
8 variables.

9 So you have to look at that, and
10 you have to analyze that. You have to
11 see if sales go up, did cost go up or
12 did they stay flat. And so the fact
13 that he hasn't included a variable
14 operating cost and he just stopped at
15 the gross profit margin shows me that
16 his calculation is improper.

17 Q. Don't let me interrupt you.

18 A. Sure. So Mr. Flaherty made a
19 statement, which, in my opinion was
20 shocking. I was actually very
21 surprised. When he made the point that
22 -- and I apologize if someone wants to
23 correct me, but I have notes down here
24 that he said variable operating cost
25 are -- I think he said 99 percent or

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1 DIRECT-EXAMINATION MR. SALSBERY
2 percentages. What I tried to do when I
3 identified the letter company was to
4 show that he was doing loss profit on a
5 gross margin base. Which, from my
6 experience, and from, again, all the
7 treatise that I can point to, that's
8 not appropriate.

9 The reason why gross margin
10 percentage is not the right measure --
11 and we'll stop right there. Thank you
12 for doing that -- is that that's only a
13 portion in the variable cost, and that
14 there are costs below the gross margin
15 line that are variable operating
16 expense that you must take into account
17 in order to come up with an incremental
18 profit margin.

19 The reason why when I first said
20 I've never seen an expert put together
21 a lost profits calculation without
22 having reviewing financial statements
23 is: Determining what the variable
24 operating cost is the testimony of an
25 expert witness.

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1 DIRECT-EXAMINATION MR. SALSBERY
2 almost all fixed.

3 MR. CROWE: What was the
4 answer?

5 THE ARBITRATOR: I'm sorry.

6 MR. CROWE: I didn't hear
7 the witness.

8 THE ARBITRATOR: He's
9 telling me about Mr. Flaherty's
10 testimony that he felt that the
11 operating cost here were
12 99 percent fixed.

13 Go ahead, sir.

14 A. And so when he said that, he
15 identified one of the companies that
16 was in my -- my sample of 11 companies.
17 I think it was the VF Corporation. And
18 he said, "Look, if you look at Mr.
19 Salsbery's document that he provided,"
20 which that document came from the
21 source that's called S & P Capital IQ,
22 and you pull out all the company's
23 financial information, it just gives
24 you kind of the numbers. It doesn't
25 necessarily give you the description

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1 DIRECT-EXAMINATION MR. SALSBERY
2 behind those numbers.

3 So while we were on break,
4 because every company I ever worked on
5 and looked at, when you look at their
6 operating expenses, they have a portion
7 of their operating expenses are
8 variables.

9 Now, it depends on the company
10 because every company has their own
11 cost structure. Every company has
12 their own accounting structure.

13 So I wanted to look, because he
14 made the point of VF Corporation, I
15 just want to note, Mr. Farber, but I
16 went and looked at VF Corporation 10 K
17 for 2020, because he identified that
18 specific company, and he said that's an
19 example that all of these are SG&A
20 costs.

21 And when I went and looked at
22 that, I pulled up their 10k, and it's
23 available, publicly, online to see.
24 They have a description of all the
25 types of cost that VF Corporation

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1 DIRECT-EXAMINATION MR. SALSBERY
2 specifically warehousing and
3 distribution. And the reason why I
4 bring those up is: Yesterday there was
5 a discussion of the inventory that was
6 in the store and then it shut down in
7 September that had to be shipped back,
8 and I understand it was shipped back to
9 Secaucus, New Jersey to the warehouse.

10 In a warehouse and in a
11 distribution center, there are variable
12 costs. You've got the cost of the
13 employees that are driving the
14 forklift, getting the stuff off putting
15 them on trucks. There are components
16 of variable costs in those warehouses.
17 And my point is in bringing this up is:
18 By only focusing on the product cost,
19 Mr. Flaherty has missed out on all
20 these different types of variable costs
21 -- operating cost that I believe, if I
22 had Forall's financial statements, I
23 would be able to show.

24 I don't have those, so I have
25 to -- we are talking about another

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1 DIRECT-EXAMINATION MR. SALSBERY
2 includes in their SG&A.

3 And it is called SG&A, but you
4 have to see what are the facts of cost
5 in here. So we're talking about VF
6 Corporation, and if it's all right, I'm
7 going to go ahead and read what those
8 costs are if that's okay.

9 THE ARBITRATOR: You can
10 proceed.

11 A. So this is from VF Corporation
12 March 2020, 10K, which is available
13 online, and this is a PDF that's
14 210 pages long and this is Page 73. It
15 states, "Selling generally and
16 administrative expenses included cost
17 of product development, selling,
18 marketing, and advertising, VF operated
19 retail stores, concession retail
20 stores, warehousing, distributions,
21 shipping, handling, licensing and
22 administration."

23 The reason why I bring this up
24 is that there are variable costs in
25 some -- in those categories,

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1 DIRECT-EXAMINATION MR. SALSBERY
2 company. But I don't think that other
3 company is similar to Forall, so
4 therefore, I believe that Forall would
5 have variable operating expenses that
6 should be deducted.

7 And then, secondly, I think that
8 was further supported by Ms. Gioffre's
9 testimony this morning. Which she said
10 a couple of things which I think
11 supported my margin percentages. And
12 if somebody wants to correct me, but my
13 understanding of what her testimony
14 was: First she said that the gross
15 profit was 45 to 50 percent, so I think
16 we are all on board with that. That's
17 consistent with what Mr. Flaherty
18 stated.

19 However, she also said there are
20 15 to 20 percent of what's called "soft
21 cost," which would be freight, duty,
22 and transportation. And so if you just
23 take the 45 to 50 that she mentioned,
24 take off that additional 15 to
25 20 percent of soft cost, now you're

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1 DIRECT-EXAMINATION MR. SALSBERY
2 down to 25 to 35 percent, which I would
3 call incremental costs.

4 Now, I would pause there because
5 she didn't mention in her discussion,
6 in her description, that there was the
7 additional variable operating cost,
8 which we just discussed that VF
9 Corporation had with the warehouse
10 operators and any variable cost within
11 the warehouse.

12 If you were to take those under
13 consideration, it would further reduce
14 the margin, incremental margin. And in
15 my opinion, that testimony, the VF
16 Corporation, supports at least the
17 range of profits that I've included in
18 my report, which is down here where
19 it's, like, about 11.96 percent, which
20 I used because counsel asked me to, to
21 say, "Hey, could you just kind of
22 estimate what you think the incremental
23 profit percentages would be?"

24 And Rod, if you could go --
25 scroll up a bit to where we get to the

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1 DIRECT-EXAMINATION MR. SALSBERY
2 have not been proven because the
3 information that I think is necessary
4 to support the damages, but also to
5 allow the apposing side to test it.
6 And Mr. Flaherty -- in fact, can we
7 pause? I'm sorry, Rod. Can you go to
8 Mr. Flaherty's report. Can you bring
9 that up?

10 Q. Certainly.

11 A. And go to Schedule 3.

12 Q. Absolutely.

13 A. So the point I want to make is
14 -- two things, so even assuming that
15 all this -- all the cost information in
16 this schedule is accurate. I have a
17 couple of points on this I'd like to
18 point out.

19 There's eight products on here,
20 and we've identified one of Sarah's
21 purchase orders that was provided in
22 the discovery record, and Sarah
23 purchased a lot more than just, I
24 guess, eight products whatever these
25 are. They purchased a significantly

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1 DIRECT-EXAMINATION MR. SALSBERY
2 damages. Right here. So these are the
3 incremental profit percentages. And,
4 again, this is not based upon Forall.
5 I would like to have Forall, to see
6 what their actual incremental profit
7 percentage is. I don't have that.

8 So I've come up with a range of
9 12 and a half to 22 percent incremental
10 profit margin, which, in my opinion, is
11 consistent with what Ms. Gioffre
12 testified to this morning.

13 THE ARBITRATOR: All right.

14 Q. And let me know where you'd like
15 to go next in your report if you're
16 finished with this point?

17 A. Yeah. I think we've covered
18 that. I think the next point -- if we
19 could scroll back to my report. And I
20 apologize, I'm just flipping through my
21 report to make sure. Can we go to Page
22 10 of my report?

23 So as Mr. Lewis is scrolling up,
24 I just want to summarize. So again, my
25 opinion is that lost profit damages

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1 DIRECT-EXAMINATION MR. SALSBERY
2 larger of amount of products than just
3 these eight.

4 These eight products
5 represented, I think, six percent of
6 the purchases that Sarah made on this
7 one purchase order, and that purchase
8 was for \$466,000.

9 So I don't think this is a
10 representative sample, one. Two, I've
11 heard testimony that Forall
12 self-manufactures some product and also
13 buys from third parties.

14 I don't know if these products
15 are products that are manufactured by
16 Forall or bought by a third-party,
17 because I would imagine they have
18 different cost structures. I don't
19 know if that -- how that plays into it.

20 And then my last point about
21 this is -- actually, there's two more
22 points. My third point is this: A
23 snapshot in time. It's just one period
24 of time. So even this was correct, how
25 do their margin fluctuate over time.

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And the last point is his source document, which I haven't seen. I would really like to see this. But I'll just note -- and, again, I'm just basing this off on what the description is. It says, "Sample Loss Margin Versus Sarah".

In my experience, what you want to use when you're putting together a damage calculation is you want to use contemporaneous documents. This source file is a file that was developed for this arbitration. So in my mind, that causes me to question how reliable that data is.

And it was put together by accounting people. And I'm not questioning those individual's accounting expertise. By no means am I saying anything about that. However, I do question whether or not they had experience putting together damages calculations.

I personally have gone through

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A. Can we go to page 10?

MR. CROWE: Mr. Farber, can I ask this, is there going to be direct-examination by Mr. Lewis, or is this just a narrative argument by Mr. Salsbery?

THE ARBITRATOR: Let's have a question. Go ahead, Mr. Lewis.

MR. LEWIS: Let me just get on the page that we are trying to

--

THE ARBITRATOR: Do you disagree with the 10 percent that Mr. Flaherty used?

THE WITNESS: Mr. Farber, I have no basis to agree or disagree with it. There's no support that was provided for me to test it.

Again, in my opinion, that's standard to put together a damage calculation. In my opinion, its claim for inventory on hand should be thrown out. I

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significant amount of training to identify what cost should be added and incorporated. I understand Mr. Flaherty just had some kind of conversation with them saying, "Hey, give me these costs," and then they went off to do that.

Again, they may be the greatest accounting people. I'm not questioning them. But I don't know how much training they have in identifying what would be the appropriate cost that should be offset in a lost profits calculation. So, therefore, that's another reason why I think this is unreliable.

THE ARBITRATOR: All right.

A. Sorry. So then back to my report. And I just have a couple of more points. That's all I have on loss profits, Mr. Lewis, unless you or Mr. Farber have any other questions.

THE ARBITRATOR: No. I'm okay.

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mean, I just have no the basis.

I understand he discussed and other witnesses have said, "Well, we have the cost to bring it back, and we had to sell it," but I don't know if that 10 percent is appropriate. I don't know if they even had a loss on the inventory.

I know it makes sense to say they may have had a loss, but again, I don't know that. First off, I don't know what the basis for the 773,811 --

MR. CROWE: Objection. Mr. Farber, this gentleman is making closing argument here as opposed to an economic analysis.

THE ARBITRATOR: No. I think he is simply telling me and recapping his report and has used appropriate testimony, so he can go on. And you know, we are -- we are not abiding by the

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1 DIRECT-EXAMINATION MR. SALSBERY
2 structures of a court
3 presentation.

4 So Mr. Flaherty -- in
5 terms of the amount that Mr.
6 Flaherty used to -- as a
7 damage in connection of the
8 closing of the store, why do you
9 disagree with that, if you do?

10 THE WITNESS: I'm sorry.
11 Are we talking about inventory or
12 closing?

13 THE ARBITRATOR: I'm
14 finished with the inventory. I
15 understand your position. I
16 understand his position.

17 THE WITNESS: On the
18 out-of-pocket cost?

19 THE ARBITRATOR: Correct.

20 THE WITNESS: I'm not trying
21 to argue that the costs didn't
22 occur, and I'll note I didn't see
23 any receipts, but that's fine. I
24 understand he got it out their
25 accounting records.

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1 DIRECT-EXAMINATION MR. SALSBERY
2 I don't think that -- in my
3 opinion, that's for you to
4 decide, not for an expert to put
5 in as damages.

6 Secondly, if you look at
7 the cost, that \$44,000, that was
8 incurred in 2015. Again, the
9 largest is the 25,828. I can see
10 an argument that that cost is,
11 again, related to the litigation.
12 I know it was a little bit
13 earlier, and that's why I break
14 it out.

15 But if it was determined
16 that that's really part of it to
17 kick-off of the arbitration, then
18 I would say that's not
19 appropriate to include it in.

20 And then lastly, the
21 remaining cost or the majority of
22 the remaining cost for a trip out
23 to Las Vegas, Mr. Farber, I
24 think you've mentioned that if
25 that trip -- the reason why I

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1 DIRECT-EXAMINATION MR. SALSBERY

2 And I'll agree with him,
3 I have done this before. If I
4 get information, I don't -- a
5 company's accounting records, I
6 don't always go back and try to
7 test it. So I'm not trying to
8 dispute that.

9 However, I will dispute
10 -- a couple of points I want to
11 make. His \$84,000 from '18 to
12 '20, it appears those are legal
13 costs for this arbitration. And
14 so when I've ever done damages, I
15 don't put in the cost of the
16 actual arbitration into damages.
17 That's up to you, Mr. Farber if
18 you want to award those. That's,
19 to me, not testimony for an
20 expert.

21 In fact, you if look at
22 the sheet itself, the last entry
23 is \$5,000 for his own company's
24 retainer. So he's trying to
25 claim damages for his own fees.

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1 DIRECT-EXAMINATION MR. SALSBERY
2 believe that's an appropriate
3 damage is if they go out there
4 every month as part of their
5 normal operations, then that cost
6 would have been whether or not
7 the store closed or not. You
8 have to show it was incremental.

9 Now, if they went there
10 and they normally never go out
11 there, then yeah, that would be
12 appropriate damages. Again, I
13 can't test it. - I don't -- what
14 I would need is to say let me see
15 where that account came in.

16 He shows you just an
17 entry for that account, but I
18 would want to see the history for
19 that account. And said yes, I
20 see zero, zero, zero, I see a
21 spike, that's a zero. I don't
22 have that information. So if
23 those costs are not incremental,
24 I don't think they should be
25 awarded as damages. If they are

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1 DIRECT-EXAMINATION MR. SALSBERY
2 incremental, then they are
3 appropriate for damages.

4 THE ARBITRATOR: All right.
5 Mr. Lewis, anything
6 else?

7 MR. LEWIS: Yes.

8 Q. Mr. Salsbery, you understand
9 that Mr. Flaherty calculated damages
10 through 2021, right?

11 A. That's correct.

12 Q. And to Mr. Flaherty's credit or
13 to his defense, he could not have
14 foreseen what would have happened in
15 2020, I mean the COVID pandemic, right?

16 A. Correct.

17 Q. However, since these reports
18 have been exchanged, we have been
19 besieged with this pandemic; do you
20 think that needs to be taken into
21 account for any damages analysis?

22 MR. CROWE: Objection.

23 THE WITNESS: What's the
24 objection?

25 MR. CROWE: The spear of

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1 DIRECT-EXAMINATION MR. SALSBERY
2 force majeure clause, but I may
3 have missed it.

4 MR. BROWN: There was not --
5 I'll have that for you in one
6 second, Mr. Farber, but --

7 THE ARBITRATOR: Ordinarily,
8 it would be in Article 17, which
9 is the general provisions.

10 MR. SHAH: Mr. Farber, I
11 don't believe there is one.

12 MR. BROWN: There is not
13 one, Mr. Farber. And in any
14 respect, neither are any of the
15 case that one has seen coming
16 down and leading to the pandemic
17 and COVID arising to the level of
18 a force majeure. That's what we
19 are seeing consistently.

20 MR. LEWIS: Again, what we
21 were dealing with was Mr. Crowe's
22 objection.

23 THE ARBITRATOR: This is
24 going to be a kind of legal
25 argument that you guys might want

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1 DIRECT-EXAMINATION MR. SALSBERY
2 expert testimony on subsequent
3 events in terms of the
4 anticipating profits in this
5 transaction because the national
6 market of the economy doesn't
7 factor into a purchasing
8 requirement.

9 They were going to have
10 to purchase this product and
11 incur cost no matter which way
12 the economy was going.

13 THE ARBITRATOR: Was there a
14 force majeure clause in the
15 license agreement, Counselor?

16 MR. LEWIS: I believe there
17 is. I'll ask Mr. Shah to give us
18 that provision.

19 But despite Mr. Crowe's
20 testimony there, there was an
21 objection. That's something he
22 can cover in cross-examination.

23 THE ARBITRATOR: Hold on one
24 minute, though, as long as we are
25 on the point. I don't remember a

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1 DIRECT-EXAMINATION MR. SALSBERY
2 to make, but I actually looked to
3 see if there was a force majeure
4 clause, and I didn't see one, and
5 I think I'm being told by counsel
6 that I was right in not observing
7 one.

8 Look, when you do a
9 damage analysis, usually you do
10 it as of the date of the breach,
11 and you look forward. So why
12 should I take into account the
13 pandemic, Mr. Salsbery?

14 THE WITNESS: If there's not
15 a force majeure clause, you're
16 right, you would look at from the
17 time of the breach going forward.

18 I will note, and if you
19 use the \$900,000 per the
20 contract, then you're correct,
21 Mr. Farber, there would be no
22 impact from the pandemic.

23 However, if you were to
24 determine that -- and again, I
25 understand this is up for dispute

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 whether or not they met the
 minimum purchase requirement, but
 assume that they didn't meet the
 minimum purchase, and you look
 more at what they actually were
 purchasing every period, then I
 think there is an argument to be
 made that if the damages go out
 to the period of 2020 and 2021,
 which, again, is beyond what I
 think is a reasonable damage
 period, I think you should at
 least take into account that.
 For example, Caesars Palace,
 through my research, was closed
 from March 17th to May 29th.
 It's just a factor that
 you would consider, but I think
 you would have to go outside the
 four corners of the agreement and
 say the \$900,000 purchase is not
 required because they didn't meet
 it. That's the only point I make
 on that.

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CROSS-EXAMINATION MR. SALSBERY
 CROSS-EXAMINATION
 BY MR. CROWE:
 Q. Good afternoon, Mr. Salsbery.
 A. Good afternoon, Mr. Crowe.
 Q. I heard you mention you had some
 experience in the retail business, your
 family is the in retail business as
 well?
 A. That's correct.
 Q. Have you had experience in the
 fashion luxury brand that you've worked
 on or consulted, particularly Italian
 menswear?
 A. No.
 Q. Or any high-end fashion?
 A. Not that I can recall.
 Q. Is it fair margins are different
 in different industries; do you agree
 with me on that?
 A. I would agree.
 Q. Now, let's talk about this
 mitigation theory. Do you know, was
 there an obligation by Forall to incur
 certain build-out cost at the

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 MR. CROWE: Objection.
 THE ARBITRATOR: Anything
 else, Mr. Lewis.
 MR. LEWIS: Nothing for now.
 Let's see if I need to do any
 re-direct.
 THE ARBITRATOR: Mr. Crowe,
 you need a few moments or you
 ready to go?
 MR. CROWE: We are ready to
 go.
 THE ARBITRATOR: Look,
 Mr. Salsbery, don't argue with
 Mr. Crowe. Just try to respond
 to his questions, all right?
 You're certainly very
 well spoken and -- but Mr. Crowe
 is better spoken, so just listen
 to his question and try to
 respond to his question directly
 and succinctly, unless you hear
 Mr. Lewis object.
 Mr. Crowe, why don't you
 proceed.

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CROSS-EXAMINATION MR. SALSBERY
 initiation of this contract?
 A. There was.
 Q. And do you know what that amount
 was?
 A. I believe -- give me one second.
 I think Mr. Flaherty actually mentioned
 it. It was -- I'm using his report,
 and this is Page 3 of his report.
 I think he mentioned that Forall
 paid -- I want to say 500 -- about
 \$512,000; is that what you're referring
 to?
 Q. Yes. A substantial amount, half
 a million dollars is a substantial
 amount.
 A. I would agree.
 Q. And did you -- did you consider
 that in your analysis that there was
 going to be an operator that was going
 to come down the pike and open up a
 shop at the behest of Forall in Las
 Vegas or some other location to replace
 the sales that you say they're not
 entitled to?

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1 CROSS-EXAMINATION MR. SALSBERY

2 A. Did I take into account that
3 there would be an additional, let's
4 just say, \$500,000 that Forall would
5 have to incur again; is that what
6 you're asking?

7 Q. Million dollars total, someone
8 is going to have to spend, the new
9 operator, Forall, and so you say that's
10 not a big deal. Go get somebody else
11 to sell the clothes. So my question
12 is --

13 THE ARBITRATOR: Hang on. I
14 don't think he quite said that,
15 Mr. Crowe, but this there is --
16 the notion that this money was
17 spent both by Sarah and on the
18 50/50 basis by Forall, with the
19 idea that it would be used over
20 10 years, and it was not.

21 So, arguably, Forall
22 could have said I have additional
23 damage there, and I think that's
24 the important of what Mr. Crowe
25 is asking about.

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1 CROSS-EXAMINATION MR. SALSBERY

2 portion because the store was shut down
3 early, I did not, because it was not a
4 component of Mr. Flaherty's damage
5 calculation.

6 Q. You would agree there is damaged
7 sustained by Forall as a result of this
8 breach?

9 MR. LEWIS: Objection.

10 THE ARBITRATOR: Say it
11 again, Mr. Crowe. I didn't hear
12 it.

13 Q. You would agree with me that
14 according to your experience this is
15 damages that they've sustained as a
16 result of the breach by the doctors?

17 MR. LEWIS: Objection.

18 A. I would agree that if they --

19 THE ARBITRATOR: Hang on,
20 Mr. Salsbery. I've got to hear
21 the objection.

22 Go ahead, Mr. Lewis.

23 MR. LEWIS: It's not a
24 damage component because it
25 hasn't been claimed as damages.

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1 CROSS-EXAMINATION MR. SALSBERY

2 THE WITNESS: Correct.

3 There's your kind of your
4 question, Mr. Farber --

5 THE ARBITRATOR: I'm going
6 to let Mr. Crowe rephrase it as
7 he sees fit.

8 Go ahead. I didn't hear
9 you, Mr. Crowe.

10 Q. I'll adopt Mr. Farber's question
11 in terms of the additional cost that
12 Forall incurred as a result of this.

13 A. Sure. That -- I did not address
14 that \$512,000. I actually have a note
15 on here, because it wasn't put forth as
16 a damage claim. But I understand.
17 I've done that before. I've done a lot
18 of government contract work. And what
19 you're referring to is unabsorbed
20 overhead, right.

21 So, for example, that \$512,000
22 -- and again, I'm almost making the
23 argument for Forall, but what Mr.
24 Farber is trying to question is: Did I
25 consider the unabsorbed overhead

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1 CROSS-EXAMINATION MR. SALSBERY

2 Mr. Salsbery said he had seen it
3 claimed as damages in other
4 instances.

5 THE ARBITRATOR: I think
6 that has to be sustained because
7 there is no claim for that. So I
8 was simply -- I raised it
9 because I was recasting your
10 question, Mr. Crowe.

11 Let's move on.

12 MR. CROWE: I think it
13 naturally flows from the facts
14 and circumstances, so be that as
15 it may.

16 Q. My question is: In terms of
17 mitigating the damages in your theory
18 that another store is going to be
19 feasible in 18 months, did you consider
20 that it would be much more difficult to
21 accomplish that with the million dollar
22 cost having to be absorbed by the
23 contracting parties in that
24 circumstance?

25 A. I did not take into account the

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1 CROSS-EXAMINATION MR. SALSBERY

2 additional -- any additional cost that
3 may be incurred to open up a new store.

4 Q. And your opinion as to the
5 damage or lack thereof to the brand
6 market in Las Vegas, was based on this
7 cursory internet search a few minutes
8 ago?

9 A. No.

10 Q. So do you have any knowledge of
11 the luxury menswear market in Las Vegas
12 in 2016 following this incident?

13 A. My apologies. I'm not trying to
14 argue with you. You asked two
15 questions; do you want me to answer the
16 first question or the second question?

17 Q. You answered the first question.
18 You said it was not limited to the
19 internet search. My second question
20 is: You don't have any firsthand
21 knowledge or any knowledge in
22 particular as to what was happening in
23 2016 in Las Vegas following this abrupt
24 eviction of this luxury store in the
25 mall, correct?

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1 CROSS-EXAMINATION MR. SALSBERY

2 no damage category for impact to the
3 brand, so I didn't study that.

4 Q. Maybe you're missing the point
5 of my question, Mr. Salsbery. I'm
6 asking your theory is that they could
7 have opened a new store, right, in Las
8 Vegas or some other place?

9 A. Correct.

10 Q. And I'm telling you, assuming
11 that there's testimony that there was
12 substantial damage to the brand name in
13 Las Vegas, and testimony further that
14 that would inhibit an operator from
15 opening a new store, that would impact
16 your analysis in your conclusions,
17 correct?

18 A. No.

19 Q. It would not?

20 A. I would -- I -- I would -- I
21 would -- I'm sorry. I didn't mean to
22 talk over you.

23 Q. Okay. My question is: Not --
24 so you're saying that would not impact
25 your analysis. You would adhere to the

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1 CROSS-EXAMINATION MR. SALSBERY

2 A. That's correct.

3 Q. But you weren't able to analyze
4 to what extent this damage may have
5 factored in the ability to inability of
6 Forall to open a new store in Las
7 Vegas, or for that matter in any place
8 in Nevada, correct?

9 A. I didn't see anything claimed by
10 Forall in Mr. Flaherty's report that
11 suggested there was damage that went
12 beyond just lost sales under the
13 \$900,000. If that was the case, I
14 would have studied it. There was claim
15 for that.

16 Q. You weren't here for the entire
17 arbitration, right, so you didn't hear
18 testimony from a gentleman on behalf of
19 Forall who testified as to the damage
20 of the brand and the resulting impact
21 on the ability to open a new store;
22 were you here for that testimony?

23 A. No. As I stated, my testimony
24 is specifically related to the damages
25 quantified by Mr. Flaherty, and he had

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1 CROSS-EXAMINATION MR. SALSBERY

2 notion that they could have opened a
3 store in 18 months, notwithstanding
4 testimony from somebody on the grounds
5 that as a result of this midnight
6 eviction, their name and reputation was
7 damaged in the Las Vegas market; that's
8 what you're telling us?

9 MR. LEWIS: Objection.

10 THE ARBITRATOR: Hang on.
11 Sustained. I'm not aware that it
12 was a midnight eviction.

13 Q. Would you agree with me it was
14 an abrupt eviction in the context of
15 the retail business?

16 THE ARBITRATOR: Mr. Crowe,
17 I got a handle on when it took
18 place. We don't need this expert
19 to give us an opinion on whether
20 an eviction was abrupt.

21 MR. CROWE: My point,
22 Mr. Farber, is that his testimony
23 that the nature of this
24 proceeding, this eviction,
25 impacted the name and reputation

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1 CROSS-EXAMINATION MR. SALSBERY
2 of the manufacturer in this local
3 market, and so --

4 THE ARBITRATOR: And I think
5 that Mr. Crowe is asking if you
6 took any of that into account in
7 your 18-month analysis?

8 THE WITNESS: You want a
9 yes-or-no question, the answer is
10 no.

11 Q. Are you aware that Forall
12 notified Sarah in March of 2016 that
13 they needed to make a buy for the fall,
14 winter 2016 season?

15 A. I recall that being discussed.
16 I don't know if I heard it in this
17 arbitration or in a document. If you
18 have something you can show me, I'd be
19 happy to look at it, but I don't have a
20 clear recollection of what you're
21 speaking of.

22 Q. You've ever heard of a concept
23 called "lost volume sales"?

24 A. I'm sorry.

25 Q. Are you familiar with the

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1 CROSS-EXAMINATION MR. SALSBERY

2 A. I do.

3 Q. Now, you -- you talk about -- we
4 talked about -- you agree whether the
5 margin or what you call the gross
6 margin that Mr. Flaherty calculated,
7 and there's been a lot of testimony as
8 roughly 50 percent is -- is consistent
9 with your understanding, correct?

10 A. Directionally, I'll say yes.
11 But again, I do not have Forall's
12 financial statement to verify that
13 their gross margin is 50 percent.

14 Q. No.

15 A. Another witness said 45 to 50.
16 I'm just saying, he said 50.
17 Directionally, it seems the range. I'm
18 not sure what Forall's actual gross
19 margin is. That's my opinion.

20 Q. And you'd agree that --
21 withdrawn.

22 In this paragraph, the last
23 sentence, you describe some of the
24 variable operating expenses that you
25 would have applied in the circumstance,

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1 CROSS-EXAMINATION MR. SALSBERY
2 concept of lost volume sales?

3 A. I am not.

4 Q. So you don't know the Uniform
5 Commercial Code in the applicability in
6 the mitigation of damage theory that
7 you're posting?

8 A. Well, I do use -- I understand
9 that's actually one of the documents I
10 talk about that discusses the code.
11 That -- that's discussed in the Dunn
12 book that I have, but specifically to
13 the lost volume and that definition, if
14 you have something to show me -- maybe
15 I just called it something differently
16 or maybe I don't know, but if you have
17 something to show me, I'd be happy to
18 look at it.

19 Q. That's all right. I'm not going
20 to show you anything. Let's talk about
21 this gross margin theory and your
22 difference with Mr. Flaherty, okay?

23 I have your report. And in
24 particular, I want to go to Paragraph
25 26. Do you have the report handy?

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1 CROSS-EXAMINATION MR. SALSBERY

2 correct, to make a different
3 calculation. Did I read that
4 accurately?

5 A. No, you don't. What that last
6 sentence is trying to say are -- for
7 certain types of businesses -- because
8 every business has their on cost
9 structure, and this kind of costs for
10 some businesses may be variables.

11 Now, I heard testimony earlier
12 today or yesterday that they didn't
13 have commissions, so maybe those costs
14 aren't part of Forall's, but I don't
15 have Forall's own statement to see
16 which one of these costs go to their
17 financial statement, and which ones of
18 these are variable or fixed.

19 So these are just more generally
20 speaking, because I don't know what
21 costs Forall's incurring.

22 Q. Well, credit card fees you
23 mentioned here, isn't that something a
24 railer typically operates or is that
25 something a wholesaler is going to

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1 CROSS-EXAMINATION MR. SALSBERY
2 absorb?

3 MR. LEWIS: Objection.

4 THE ARBITRATOR: What's the
5 objection?

6 MR. LEWIS: Mr. Salsbery
7 just testified that he listed
8 general categories. He was not
9 saying that these were Forall's.

10 THE ARBITRATOR: Overruled.
11 You can answer it.

12 A. Again, you're right. Would
13 credit cards be more traditional of a
14 retailers, yes. Does it mean that
15 Forall doesn't take purchases through
16 credit card, I don't know.

17 I don't know. Because again, I
18 don't have their financial statement to
19 review, but I would agree with your
20 premiss, that typically speaking, those
21 types of cost are retailers, and not a
22 company like Forall, but I would need
23 to see their financial statement to see
24 if they have any of those types of
25 costs.

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1 CROSS-EXAMINATION MR. SALSBERY
2 statements we could see this. We don't
3 know. The way I understand her
4 testimony was: It's not added, it's a
5 subtracter. So I look at it
6 differently than you do.

7 Q. Okay. Well, if she -- if a
8 witness on behalf of Forall testified
9 that the cost of manufacturing the
10 product is 35 to 40 percent, and then
11 there's additional cost incurred in
12 freight and duty of 15 percent,
13 approximately, or 20 percent on the
14 high end, do you have any reason to
15 disagree with that assessment?

16 MR. LEWIS: Objection. It's
17 a hypothetical. It is not
18 testimony that Mr. Salsbery has
19 heard.

20 THE ARBITRATOR: First of
21 all, I'm not sure I agree with
22 you that that's not testimony he
23 heard, and second of all, there's
24 nothing wrong with an expert
25 dealing with hypothetical. So

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1 CROSS-EXAMINATION MR. SALSBERY

2 Q. Now, you referenced a witness's
3 testimony this morning. This young
4 lady by the name of Michelle. And in
5 fact, she referenced 35 to 40 percent
6 margin, and then credited additional
7 cost to freight and duty of 15 to
8 20 percent.

9 So if you add on the high end,
10 your calculation of -- would be
11 60 percent, right, margin?

12 A. No.

13 Q. Well, you said --

14 A. I think that would be opposite
15 of what you're doing. I think what she
16 said was the gross profit was 45 to 50
17 and then soft cost would be 15 to 20,
18 and so the way I understood what she
19 said was you would subtract that
20 percentage from the gross margin, so it
21 wouldn't go up, it would go down.

22 So in my view, that would bring
23 the range down to 25 to 30 percent.
24 But again, this is a known and knowable
25 fact. If we had Forall's financial

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1 CROSS-EXAMINATION MR. SALSBERY
2 overruled.

3 You can answer the
4 question.

5 THE WITNESS: Can you just
6 say that again? It's a
7 hypothetical, but can you exactly
8 -- I just want to make sure I
9 understand and then I'll answer
10 your question if that's okay.

11 MR. CROWE: I'm going to ask
12 the court reporter to read that
13 back, if that's okay.

14 (Whereupon, a portion of the
15 record was read back.)

16 A. So if I understand this correct,
17 that would indicate a margin of
18 40 percent.

19 Q. A margin of 40 percent on the
20 low end, up to the 50 percent which was
21 mentioned earlier today.

22 A. The reason why it stopped -- I
23 have no reason to dispute those. I
24 don't have the financials to say that's
25 right or wrong.

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CROSS-EXAMINATION MR. SALSBERY

I would note that what she described, again, was the cost of the product, the freight, the duty, the transportation. What that doesn't included is the variable cost for that warehouse in Secaucus, New Jersey. That needs to be factored in.

So I'm not saying that -- as you work down, you can stop there, like you can stop at that. But what I'm saying is: There's costs below that -- that she didn't mention. And I'm not saying she was trying to avoid it. She just didn't discuss it.

So I'm not disputing that margin percentage, but it gets back to the same thing I have an issue with Mr. Flaherty that there's cost below that you would have to analyze that are variable.

Q. Well, one of the cost, quote, below that I think you mentioned was transportation cost; isn't that encompassed within the term "freight"?

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CROSS-EXAMINATION MR. SALSBERY

transportation or distribution. Those are warehouse costs. So I can't sit here today and say -- I disagree to say that that would be in -- but it may be for Forall if we have the financial statements.

Again, this is known or knowable. We can look at them. We can see them. We don't have them.

Q. It sounds to me like, Mr. Salsbery, your biggest complaint is you just don't know enough, but the person who does know has a different opinion.

So you would agree with me that it would be reasonable to listen to the person that has more information, correct?

A. I disagree.

Q. Okay. There's a section in your report here, I think it's -- where is it? Right at the end. Paragraph 2, and you talk about a set-off from Forall's purported damages. Did you

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CROSS-EXAMINATION MR. SALSBERY

A. 100 percent. That could be in there. I agree with that. But one of the big costs that we haven't discussed are the warehouse -- in the warehouse. In the distribution.

So you get that product from Italy. I understand it comes into New York or New Jersey. There's costs associated with that before it gets shipped out to Las Vegas. There's been no accounting for what are the variable costs at that location.

Q. Well, you don't know that. In fact, freight, as it's commonly understood, includes those distributions, do you not?

A. That's not a freight cost. That's the forklift driver, you know. I would imagine that -- I haven't been to the Secaucus warehouse, but I've had projects and I've had to work in warehouses.

There are operators that are in there, but I wouldn't clarify those as

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CROSS-EXAMINATION MR. SALSBERY

repair that section?

A. I did.

Q. And on what basis did you indicate that Sarah would be required to pay -- withdrawn -- that Forall would have to have a set-off for Forall's legal cost -- I'm sorry, that Sarah would be entitled to a set-off for its own legal costs?

A. First off, my understanding, and I looked at that document, and I -- I recall this was back in January or February when I wrote my report.

My understanding was that was a settlement. That was an amount that was paid to the Forum Shops of \$31,000. I saw that payment. And the point of that is if there are damages that are determined to be awarded to Forall that these costs were that incurred by Sarah should be an offset, and I would say if it's determined that these costs are the result of the action of Forall.

Q. The costs of Forall in being

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1 CROSS-EXAMINATION MR. SALSBERY
2 evicted and taking eight days or nine
3 days to get out when the doctors sent
4 them the letter in early July, is that
5 what you're talking about?

6 A. I understand that's in dispute.

7 All I'm saying is: If it's
8 decided that it's Forall's
9 responsibility and they are the ones
10 that are the cause of that eviction or
11 however you want to say, whatever
12 terminology you want to use, then I
13 would say if damages are awarded, that
14 would be considered as an offset.
15 That's the extent of my opinion on
16 that.

17 MR. CROWE: Can I have two
18 minutes, Mr. Farber?

19 THE ARBITRATOR: Yes. Do
20 you want to take the ordinary
21 five?

22 MR. CROWE: Yes.

23 (Whereupon, a recess was
24 taken.)

25 THE ARBITRATOR: Anything

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1 CROSS-EXAMINATION MR. SALSBERY
2 about, that's what I'm hearing about,
3 is that correct?

4 A. Yes.

5 THE ARBITRATOR: Hang on,
6 Mr. Lewis. You're on mute.

7 MR. CROWE: I think he's
8 self-muting.

9 MR. LEWIS: I wish I could
10 be proactive in my muting to New
11 York, sometimes. I was objecting
12 to that question.

13 MR. CROWE: Anybody in
14 particular you'd like to mute?

15 THE ARBITRATOR: All right,
16 guys. Come on.

17 MR. LEWIS: I was objection
18 to the question. Why don't you
19 rephrase the question?

20 MR. CROWE: For the most
21 part, most of us are in New York,
22 so we probably are all subject to
23 this.

24 Q. Now, getting back to your
25 report, Mr. Salsbery, in that last

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1 CROSS-EXAMINATION MR. SALSBERY
2 further, Mr. Crowe?

3 MR. CROWE: Just a couple of
4 questions. I'll be quick.

5 THE ARBITRATOR: Okay.

6 Q. Mr. Salsbery, just a few
7 questions here.

8 On the question of advertising
9 as a variable operating cost, you also
10 mentioned -- were you aware that the
11 contract provision included a statement
12 that Forall would have to reimburse
13 advertising expenses on a dollar for
14 dollar basis with this particular
15 operator, Sarah?

16 A. Yes.

17 Q. And were you aware that they did
18 in fact do that?

19 A. Yes.

20 Q. And so that was a known cost and
21 factored into this calculation,
22 correct?

23 A. That portion.

24 Q. So there's some unknown
25 advertising expense that you're worried

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1 CROSS-EXAMINATION MR. SALSBERY
2 paragraph, it's the second to last,
3 Paragraph 33, you mention Sarah had
4 incurred \$244,000 in legal fees. I see
5 that; do you notice that?

6 A. Yes.

7 Q. What is the -- what is the
8 relevance of that in your analysis?
9 Why is that included?

10 A. I included that because
11 Mr. Flaherty included the cost for your
12 litigation in his calculation, even
13 though I don't put that as an offset, I
14 just wanted to point that out.

15 Q. Did you notice in the contracts
16 whether or not there was any attorney's
17 fee provision that would run in favor
18 of Sarah?

19 A. I did not review that.

20 Q. Okay.

21 MR. LEWIS: I think that's
22 all I have, Mr. Farber.

23 THE ARBITRATOR: Mr. Lewis,
24 anything else?

25 MR. LEWIS: Briefly, yes.

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1 RE-DIRECT EXAMINATION MR. SALSBERY
2 RE-DIRECT EXAMINATION
3 BY MR. LEWIS:

4 Q. Mr. Salsbery, Mr. Crowe asked
5 you whether you took into account the
6 cost to build out a store, and he
7 mentioned that Sarah had to come up
8 with \$500,000 and Forall matched that;
9 do you recall?

10 A. Yes.

11 Q. Okay. And you suggested that
12 that would be an impediment to finding
13 a new operator, right?

14 A. Yes.

15 Q. However, the two doctors honed
16 down their savings, were able to come
17 with up with this initial financial
18 investment to build out the store in
19 Vegas, right?

20 THE ARBITRATOR: Counselor,
21 this is re-cross. You think I
22 don't know that already?

23 Q. So does that give you -- does
24 that give you any indication, Mr.
25 Salsbery, that it wouldn't have been --

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1 RE-DIRECT EXAMINATION MR. SALSBERY

2 A. That's correct, yeah.

3 Q. And when you -- Mr. Crowe asked
4 you about whether Forall had given
5 Sarah notice in March of 2016 that it
6 was required to make some merchandise
7 purchases, when you were testifying
8 about 15 months, but there was no
9 communication from Forall to Sarah that
10 began in August of 2016, right?

11 A. That's correct.

12 Q. That's the 15 month period after
13 the store closed when there was no
14 notice?

15 A. That's what I was referring to.

16 Q. And there was considerable time
17 spent with Mr. Crowe poking at the
18 general costs that you had included in
19 your report when you were calling out
20 some general costs.

21 Are there some costs that you
22 would expect -- excuse me -- some
23 variable costs that you would expect to
24 see had you had an opportunity to
25 review Forall's operating -- excuse me

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1 RE-DIRECT EXAMINATION MR. SALSBERY
2 it wouldn't have been possible to find
3 an operator because it would have
4 required an initial investment?

5 A. I don't think that -- I don't
6 think that would be a factor,
7 necessarily, would stop -- could cause
8 Forall to not be able to find another
9 operator.

10 Q. And I think you testified about
11 this before, would the store have been
12 in Las Vegas?

13 THE ARBITRATOR: I got it.

14 He did testify about it before.

15 Okay.

16 Q. And then you were asked about
17 some testimony you weren't present for.
18 It was Mr. Torello-Viera talking about
19 impact to the brand. Do you remember
20 being questioned about that?

21 A. Yes.

22 Q. Now, you did include an
23 additional five months in your damages
24 period to account for unknown; is that
25 right?

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1 RE-DIRECT EXAMINATION MR. SALSBERY
2 -- financial statement.

3 A. Yes. That would be the cost of
4 the warehouse. That's a significant
5 portion --

6 THE ARBITRATOR: Guys, this
7 is re-cross. I've heard this.
8 This is now the fourth time I've
9 heard it. I got it. Let's move
10 on.

11 MR. LEWIS: I've just got a
12 couple more questions.

13 Q. Mr. Crowe was asking you as if
14 we had heard the gospel from Michelle
15 Gioffre; were you present for that
16 testimony?

17 A. Yes.

18 Q. Did Ms. Gioffre have to be
19 pushed to give a range after she said
20 she didn't recall?

21 THE ARBITRATOR: Hang on.

22 Sustained. I don't need a
23 damages expert to testify to me
24 about pushing witnesses. I see
25 it for a living. Next question.

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1 RE-DIRECT EXAMINATION MR. SALSBERY

2 Q. Mr. Crowe asked you a question
3 and you started answering pretty
4 quickly. Mr. Crowe asked you, and I'm
5 paraphrasing, Mr. Crowe, your biggest
6 argument or your biggest concern is
7 that you didn't have enough
8 information. Is it more appropriate to
9 listen to the person that had the
10 information; do you recall being asked
11 that?

12 A. I do.

13 THE ARBITRATOR: Okay. I do
14 also.

15 A. I thought my answer was --

16 THE ARBITRATOR: Mr.
17 Salsbery, I got it. I got it.
18 Next question.

19 MR. LEWIS: Mr. Farber, he
20 wanted to clear up the record on
21 his answer. That's what
22 re-direct is. Really the main
23 question he wanted to clear the
24 record on that.

25 THE WITNESS: I want --

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1 RE-DIRECT EXAMINATION MR. SALSBERY
2 that Mr. Flaherty's use of gross
3 profits to term the lost profit damages
4 in this instance was correct?

5 A. I categorically disagree. I've
6 never seen someone do a lost profit
7 calculation based on gross profit
8 manager.

9 MR. CROWE: I think we
10 covered this earlier.

11 THE ARBITRATOR: We did.

12 MR. LEWIS: With all due
13 respect, Mr. Crowe, this expert
14 is --

15 THE ARBITRATOR: If you're
16 both going to talk, I won't
17 listen to either of you. There's
18 an objection to the question.
19 It's almost an exact duplication
20 of what I heard. He said that in
21 all his time he never saw this
22 before. I understand that.

23 He would add certain
24 additional deducts, and do a
25 different kind of analysis. And

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1 RE-DIRECT EXAMINATION MR. SALSBERY

2 THE ARBITRATOR: The essence
3 of your testimony, Mr. Salsbery,
4 is that you believe that Mr.
5 Flaherty should have seen more
6 documents, done some testing of
7 some of his conclusions, and you
8 feel he did not do that
9 adequately, right?

10 THE WITNESS: Correct. And
11 Mr. Crowe was trying to make the
12 point that I should just listen
13 to the witness, and I believe
14 there's different levels of
15 evidence.

16 THE ARBITRATOR: All right.
17 I kind of have that. I -- I have
18 been doing that work for about
19 40 years. So I -- I get a handle
20 on it.

21 Let's go. Next. Go
22 ahead.

23 MR. LEWIS: Last two
24 questions.

25 Q. Mr. Salsbery, did you believe

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1 PROCEEDINGS

2 I think I may have scared Mr.
3 Salsbery, because I -- oh, no.
4 There he is. I thought we lost
5 you.

6 Guys, I really do have a
7 bit of a handle on this. All
8 right?

9 MR. LEWIS: No further
10 questions.

11 THE ARBITRATOR: Anything
12 else, Mr. Lewis?

13 MR. LEWIS: Nothing further.

14 THE ARBITRATOR:
15 Mr. Salsbery, thank you very much
16 for your testimony. You're
17 excused as a witness.

18 Let me start with
19 claimant. And Mr. Lewis, do you
20 have any comment on a schedule
21 for concluding this matter?

22 THE WITNESS: Sure. I spoke
23 with my colleagues, Mr. Brown,
24 Mr. Crowe, and I think we are in
25 agreement that we think it's best

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to follow your recommendation and submit post arb briefings. And we believe November 9th is the date, based on our calenders, that we thought would be appropriate to submit those to Mr. Farber.

MR. CROWE: I think we said December 9th.

MR. LEWIS: I'm sorry. Absolutely.

THE ARBITRATOR: So here's what I want you to give me then on December 9th, that's fine, and I'm going to want you to give me a brief, no more than 20 pages, double spaced, no footnotes, and I'll do a procedural order on, probably, Monday. And you'll see this in case you don't catch any of it now.

I want copies of authorities. I'm going to come back to that in a minute. And I

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about your attorney's fees and costs. Some people say, "Well, why do you do this, because then the loser has to do this," the reason is because the loser's attorney's cost and fees informs me as to how much I should give, if anything, to the winner. But there is such a clause here.

MR. BROWN: Mr. Farber, I actually -- I beg to differ on that. And maybe it's subject to the briefing, but our position is there's a provision here that allows for recovery of costs by Sarah. There is not one that is -- by Forall, I'm sorry. There is -- there is not an equal and mirror image one that provides one for Sarah.

The prevailing provision there that I think you're referring to has to do if anyone were to challenge the

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want you to give me a draft award, not the substance of it, not the reasons, but how you think an award should read. And I take that because I like to check off the different numbers to be sure I covered everything. So give me what you believe should be a draft award, assuming that you're client has prevailed in this matter.

Now, something else, there is a prevailing party attorney's fees clause here. It's in the arbitration clause. I do not like dragging out arbitrations. I know that some arbitrators do this differently, and this is what I want you to do.

I want you to give me as though you were in bankruptcy court putting in an affidavit of services, give me the detail

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appropriateness of the arbitration and/or bring litigation and --

THE ARBITRATOR: All right. You're right. It's the last paragraph and I misremembered it. It says, "If either party brings legal action to vacate or modify the award, then you have attorneys's fees and expenses."

Where is the provision regarding the -- okay. Let me just see.

MR. BROWN: 174 is the attorney's provision benefitting Forall not Sarah.

MR. LEWIS: Mr. Farber, may I make a recommendation that we release the witnesses and --

THE ARBITRATOR: Absolutely. The witnesses can go or stay as they see fit.

Actually, Dr. Hamad, are you still on?

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DR. HAMAD: Yes, sir.

THE ARBITRATOR: And if Palma wants to stay on as well--

MR. BROWN: She already dropped.

THE ARBITRATOR: Why don't you throw her a text, because I do want to say something before I'm finished.

Well, let me ask you, we're on the record, Mr. Lewis, do you agree with what Counsel has just told me. I am reading the end of 174, and he has a point. Maybe this is only in favor of Forall. Do you agree with that or not?

MR. LEWIS: I think that we know that the doctors did not get the benefit of the bargain in drafting these contracts. It's pretty one-sided. That we've all been able to learn through this arbitration.

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in an affidavit of services. That's up to you.

If you want to argue that as a matter of some rule or something, that I should not award attorney's fees, if I find in favor of Forall, then you can so argue in your brief.

And same thing on your part, Mr. Brown and Mr. Crowe, all right. So I'm going to leave it up to both sides, but I do know Mr. Brown's argument, and I appreciate it. Okay. Okay.

So what I'm looking for then is the brief, a draft award, cases, and the -- what I just said about attorney's fees.

And I want to say something else, look, you'd both seen your cases.

Dr. Hamad, you can come on so I can see you also.

You know, no case is

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So I know there a one sided attorney's fee provision contractually, but I thought Mr. Farber was talking more about Triple A rules, and that whoever prevails in the arbitration would be able to recover fees, and not having those rules in front of me, I can't comment on it.

THE ARBITRATOR: Triple A rules do not overcome a clause. The clause will overcome Triple A rules. So here's what we are going to do, in light of my reading of 17.4, if Forall wants to put in something in the nature of an affidavit of services, you are free to do so.

And I'm going to leave it in your lap, Mr. Lewis and Mr. Shah, if there is some basis that you feel that you could recover attorney's fees if your clients prevail, then you can put

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perfect. From the perspective of Sarah, I mean there are some real questions here about liability and there's no mystery here. I mean, Mr. Lewis, you and Mr. Shah have talked about some legal doctrines and waivers and estoppel, but you've got a contract, and the contract is pretty clear. Both sides had counsel when the contract was drafted. I'm talking about the license agreement.

And even if something was not enforced, and I'm not sure the record bears that your, but even if something was not enforced, you've got issues about -- you know, you have a waiver clause in the contract. It's right there. It says what it says.

Forall, you've got some damages issues. You know, there

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-- there are some items that you've got to consider. They were brought out by the last witness. There are issues about, you know, a company that's not been profitable that's trying to collect moneys as lost profits.

Now, maybe that's possible, but there are issues about what the profit margin should be, and you know, there are some additional expenses there, how long a period of time should it have gone, the points that are raised.

Look, you do think -- and I do this, you know, some arbitrator's sit stoned faced, and they don't tell you what they're thinking. I've been carefully listening for four days. I don't abide by that. I think the arbitrator should give some thought as to what he or she

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do. That doesn't bother me at all.

I think you should talk to each other. A lot of people say that, you know, a bad settlement is better than a good decision. You know, I have feelings about this matter and let me say this: The briefs are important.

I force myself not to make a final decision until I really read the briefs, heard the closing argument from everybody, but obviously I have feelings about some of these matters because I've heard the testimony.

So I want you to spend the time on doing that and I urge you to talk to each other again. And sometimes there's a fear. They're going to think I'm weak if I'm the one who calls first. You can blame me for the fear.

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is thinking, and that's what I just did.

So there are some issues here. Now, we arbitrators are forbidden from getting involved with settlement discussions. And therefore, I will not get involved with settlement discussions. But no case is perfect. There are strengths and weaknesses on both sides here. I've just pointed some of them out. If you have not talked to each other, you're well advised to do so. And I'm going to leave it at that.

Maybe you did so this morning. I don't want to hear about it, but you're well advised to talk to each other. I have no problem making decisions. I do that for a living, and so I'm not saying this because I'd like to diminish the work that I have to

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You don't have to worry about that.

And, you know, then you get collection issues, you get other kinds of issues, all kinds of issues which a settlement would avoid. So I want to say that.

I want to go back to the schedule and then I only have one other thing I want to say. If those briefs are due December 19th --

MR. BROWN: 9th.

THE ARBITRATOR:

December 9th, let's open our calenders when we could have our closing argument.

MR. LEWIS: We were talking about that and I don't want to speak out of terms, I think my colleagues and I were wondering whether Mr. Farber would still require closing arguments after

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1 the briefing.

2 THE ARBITRATOR: I think
3 it's a very good idea to schedule
4 it, and if I decide I don't need
5 it, we'll cancel it. We do it by
6 Zoom, so it shouldn't take more
7 than an hour or so.

8 Also, you may want to
9 comment on comments in the
10 adversaries' brief, and that --
11 it's cheaper to do it through a
12 two-hour argument than to say,
13 "You guys have permission to put
14 in another brief," and I'm still
15 mindful this has already been a
16 very expensive process.
17 Although, I'm glad that we
18 finished in the four days.

19 So look at -- assuming
20 that I get it on the 9th -- this
21 is pushing it. Are you guys
22 working earlier in the Christmas
23 week, because that would give me
24 about a week to look at it. Like
25

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1 ideal. I have to say. I have a
2 joint pretrial statement due that
3 day. Christmas is right there.
4 I'm -- I don't love it.

5 THE ARBITRATOR: Well, then
6 you want to push it?

7 MR. BROWN: I don't want to
8 push it either.

9 THE ARBITRATOR: I got to
10 have, you know, 10 days to review
11 what you've given me, so.

12 MR. BROWN: It's just an
13 oral argument. I know these
14 issues well. We can do it on the
15 -- 2:00, you said?

16 THE ARBITRATOR: 2:00 on the
17 22nd, does that work?

18 MR. BROWN: Okay.

19 THE ARBITRATOR: So
20 December 22, at 2:00 p.m. by
21 Zoom. And it's up to you guys if
22 you want to have the closing
23 argument reported, you know, have
24 the court reporter undertake it.
25

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1 that Monday, maybe, how does that
2 look for you, 21st or 22nd, at
3 2:00 in the afternoon.

4 Because if I get it on
5 the 9th, I'm going to need time
6 to go through it all. And
7 remember guys, serve me by e-mail
8 and an extra copy, hard copy by
9 overnight mail because I'm an
10 under-liner.

11 So let me propose right
12 now. How does the 22nd at
13 2:00 p.m. for closing argument,
14 how does that work? How does
15 that work for you, Mr. Lewis,
16 Mr. Shah?

17 MR. BROWN: I just don't
18 want to push this to January.

19 MR. LEWIS: I prefer the
20 22nd.

21 THE ARBITRATOR: Okay. We
22 can accommodate that. Mr. Brown,
23 Mr. Crowe, how about you?

24 MR. BROWN: It's -- it's not
25

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1 My suggestion is that
2 you let our case manager know.
3 If you decide you don't want to
4 have the expense of the court
5 reporter, of Maggie, for the
6 closing argument because it's not
7 evidence, then I can easily send
8 out a Zoom notice for the closing
9 argument. All right? So you
10 guys let me know what you want to
11 do on that.

12 I only have one other
13 thing to say, and I really mean
14 this, you know, we got to do a
15 few wrangles, but I get a lot of
16 lawyers who appear before me, and
17 I wanted the clients to stay on
18 the line particularly for this,
19 and also for what I said about
20 settlement.

21 Your lawyers have really
22 worked hard. They -- both sets
23 are really good and they really
24 are. You know, Mr. Lewis, and I
25

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1 didn't hear enough from Mr. Shah,
2 but Mr. Lewis really knows his
3 business. There's no question
4 about that, and you've worked
5 very hard and I appreciate it.

6 Mr. Brown, you and Mr.
7 Crowe have equally worked very
8 hard, and I -- I appreciate
9 you both -- both sides. You're
10 really professional.

11 Whatever happens, both
12 sets of clients should know that
13 you've been well served by your
14 counsel, and that's good. And I
15 really thank you, both of you,
16 for your professionalism, and the
17 way you've handled this matter.

18 This a difficult matter,
19 and there's a lot at stake here,
20 and the lawyers were really good.

21 So Mr. Lewis, thanks.
22 Mr. Brown, Mr. Shah, Mr. Crowe,
23 thank you very much.

24 DR. HAMAD: Can I say
25

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1 something, Your Honor?

2 THE ARBITRATOR: No. Not
3 necessary. It's okay.

4 THE WITNESS: I want to
5 thank you for being fair --

6 THE ARBITRATOR: It's okay.
7 It's okay.

8 Does anyone else have
9 anything else, counsel, that you
10 would like to say? First Mr.
11 Lewis, Mr. Shah.

12 MR. LEWIS: Nothing on my
13 end, Mr. Farber.

14 THE ARBITRATOR: Mr. Brown,
15 Mr. Crowe.

16 MR. BROWN: Just I would
17 like to, you know, just thank you

18 Mr. Farber for your time on
19 the matter. Thank you Rod, thank
20 you Sohil. It's been a pleasure.

21 THE ARBITRATOR: Thank you
22 very much. All right, guys.
23 You'll get a procedural order
24 from me on Monday.
25

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1 We're adjourned
2 everyone. Thank you all very
3 much. Have a good weekend.
4 (Time noted: 4:59 p.m.)
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C E R T I F I C A T E

1 I, MAGDALENA M. ARTILES, a shorthand
2 reporter and Notary Public within and
3 for the State of New York, do hereby
4 certify:
5

6 That the Witness(es) whose testimony
7 is hereinbefore set forth was duly sworn
8 by me, and the foregoing transcript is a
9 true record of the testimony given by
10 such Witness(es).

11 I further certify that I am not
12 related to any of the parties to this
13 action by blood or margin, and that I am
14 in no way interested in the outcome of
15 this matter.
16
17
18
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25



Magdalena M. Artiles

Magdalena M. Artiles, a Court
Reporter and Notary Public
Date: November 10th, 2020

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